

## **A RAND NOTE**

**Compensation for Work-Related  
Injury and Illness**

**Danielle Cullinane**

**RAND**

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**N-3343-FMP**

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## PREFACE

The quality and strength of the armed forces depend on the principle of maintaining pay comparability with the civilian sector. If military pay persistently lags civilian pay, retention and recruiting problems are likely to ensue, as they did in the late 1970s. In recent years, a puzzling phenomenon has emerged: the growth of military basic pay has apparently lagged the growth in private-sector wages and salaries, yet military recruiting and retention remain strong. On the one hand, this phenomenon contradicts past evidence on the importance of comparable pay and increases the prospect of impending declines in retention, accession quality, and morale. On the other hand, changes in other facets of military and civilian pay may help explain this puzzling situation.

In response to the question of pay comparability, RAND has undertaken a project on setting military pay. Although the project focuses mainly on assessing the growth of military versus civilian pay, the project was also designed to delineate a particular component of pay comparability: namely, compensation for work-related injuries and illnesses. This Note presents information on eligibility, severity rating, and representative levels of compensation for the military and civilian sectors.

This project is sponsored by the Office of Compensation within the Office of the Assistant Secretary of Defense (Force Management and Personnel). The research was conducted by the Defense Manpower Research Center, part of RAND's National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense and the Joint Staff.



## SUMMARY

This Note, an evaluation of disability compensation for work-related illness and injury, compares state-mandated civilian workers' compensation programs to the military and VA programs. It concentrates on illustrating program differences and does not contain an exhaustive analysis of differences in the dollar values of compensation.

No national standard for workers' compensation exists; workers' compensation is a collection of state and federal programs, which vary greatly. Because there is no national standard, the military and VA programs are compared to the workers' compensation programs in several states. Because the military and VA disability compensation programs cover injuries and illnesses on and off the job, civilian options for coverage of nonwork-related injuries are briefly discussed.

Both civilian and military/VA programs provide the same basic benefits: cash benefits to replace lost income, unlimited medical care for the claim, and rehabilitation benefits. All programs operate as "no-fault insurance" and pay eligible claims without requiring the claimant to prove the employer was at fault.

More than 90 percent of civilian workers are covered by workers' compensation, and all service members are covered by the military/VA disability compensation programs. Workers' compensation covers all *work-related* injuries and illnesses, while military/VA disability compensation covers *all* injuries and illnesses that *began during service*. In both military and civilian programs, occupational disease is fully covered; however, establishing eligibility for diseases that have long latency periods may be difficult.

The process for compensating eligible injuries and illnesses involves rating—or assessing the severity of—the injury and then paying an award. Workers' compensation awards are generally stated in terms of a number of weeks of payment. For workers' compensation the payment is usually equal to the product of a statutory "rate of compensation" multiplied by the worker's pretax earnings. Alternatively, payments for workers' compensation calculated on a "wage-loss" basis would simply be the product of the rate of compensation multiplied by the difference between pre- and post-injury pretax earnings. The rate of compensation is prescribed by workers' compensation law and is generally 66-2/3 percent.

No service member may receive disability payments while on active duty, but service members recuperating from injury continue to receive full pay, including allowances. Service members who are injured may be separated from service if they are not expected to



recover so that they are medically fit for service. If separated from service, service members are awarded one of two disability payments, depending on the severity of their injury and their length of service: (1) *disability retirement*, which is based on monthly basic pay in retired grade and either the percentage disability or years of service (whichever is more favorable to the service member); or (2) (if the service member is unable to qualify for disability retirement) *disability severance pay*, which is based on the member's highest monthly basic pay and years of service. Disability retirement is a monthly payment, while disability severance pay is a one-time lump sum payment. Upon separation from service, the service member becomes a veteran and is eligible for compensation from the VA. The VA reduces its compensation by the amount of military disability compensation the veteran receives.

The process of rating injuries is basically the same for the civilian workers' compensation programs and the military and VA programs. However, compensation practices differ greatly. Because all states place ceilings on weekly payments for workers' compensation, workers earning wages above a certain level do not receive the full replacement rate. State programs do not usually extend payments for the full duration of disability, whereas military/VA programs do (except when one-time lump sum military disability severance payments are made). The military and VA make yearly adjustments to account for inflation, and the VA adds an allowance for dependents. Both practices are rare in civilian workers' compensation. For long-term disability, the military and VA yearly increases in compensation to reflect increases in the CPI are important to beneficiaries. Workers' compensation and VA benefits are never taxable; military benefits are taxable if the disability is not combat-related and the member joined the service after September 24, 1975.

To explore how these program differences might affect beneficiaries, this Note examines a few examples of disability compensation. It makes quantitative comparisons for a few specific cases and focuses on scheduled benefits for loss, or loss of use, of one of the limbs. These permanent partial disability cases are important because they are relatively common and costly. This Note compares disability compensation for four cases of equally skilled civilian and military workers, using the available measures of education, years of service, and occupation to approximate an indication of skill. It compares compensation for two severe injuries (both rated at 50 percent or more by both the AMA guide and the VA schedule) and two less severe injuries (both rated at less than 50 percent by both the AMA guide and the VA schedule).

The results of the analysis, although incomplete, suggest that military/VA payment for disability is as good as or better than payment provided by civilian workers' compensation for all types of compensation, except possibly payment to survivors.

Although military/VA compensation for disability may compare favorably to workers' compensation, both programs may provide inadequate benefits. Of the 19 "essential" recommendations issued in 1972 by the National Commission on State Workmen's Compensation Laws, 9 recommendations describe minimum cash benefit levels, which only Ohio meets in total. (Some states may exceed certain of the "essential" recommendations in the subset pertaining to cash compensation.) Some critics would even argue that the National Commission's recommendations do not provide adequate benefits. However, considerations of what constitutes an acceptable minimum level of benefits are beyond the scope of this Note.

Civilian workers' compensation programs have improved greatly since the National Commission's work in 1972. Both the breadth of coverage and the level of benefits have increased. On the other hand, the military's system for compensating disability has remained fundamentally unchanged since 1949. It provides good coverage and benefit levels, which are generally unmatched by civilian programs even today.



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## I. SCOPE

This Note has three purposes: (1) to provide a detailed review of civilian compensation for work-related injuries and illnesses (including civilian methods of determining the extent of injuries, level of compensation awards, recourse for unsatisfied claimants, and access to supplemental insurance that might protect workers beyond the terms of a workers' compensation program); (2) to describe the military's process of compensating work-related injuries; and (3) to compare the military and civilian practices. This description is intended to compare disability compensation practices and is *not* an econometric analysis of differences in dollar value of compensation.

Academics and industry groups have written extensively about the goals and underlying principles of civilian workers' compensation programs. In 1972, a presidentially appointed committee completed an exhaustive review of workers' compensation. The committee worked hard to clarify the system's principles and to define a program standard in light of those principles. This Note will re-emphasize the principles of civilian workers' compensation so that they can be explicitly considered in evaluating the military's system for compensating disabilities.

The description of civilian disability compensation primarily considers the state-mandated civilian workers' compensation programs. Because the military does not distinguish between work- and nonwork-related injuries and illnesses, this Note also addresses nonwork-related injuries and illnesses in the civilian sector by briefly describing some public and private disability programs. Military members are also eligible for the major federal program, Social Security Disability Insurance.

In looking at civilian workers' compensation programs, it is important to remember that *there is no national standard*, but rather a collection of federal and state programs. Federal workers' compensation programs include the District of Columbia Workmen's Compensation Act, the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers Compensation Act, and the Black Lung Benefit Fund established by the Coal Mine Health and Safety Act of 1969. Each of the 50 states has a workers' compensation law; these laws vary greatly among the states.

To describe civilian programs in a manageable fashion, this Note highlights some distinguishing features that differentiate programs by examining practices in a selected group of states. For similarities across state workers' compensation programs, it relied on the existing literature, especially *Permanent Disability Benefits in Workers' Compensation*



(Berkowitz and Burton, 1987). The following is a list of other helpful sources for information about the civilian, military, and Veterans' Administration disability compensation programs:

Alliance of American Insurers, *Survey of Workers' Compensation Laws*, Chicago, Ill., January 1988.

Darling-Hammond, Linda, and Thomas J. Kniesner, *The Law and Economics of Workers' Compensation*, RAND, R-2716-ICJ, 1980.

Gordon, Sol (ed.) *1990 Uniformed Services Almanac*, Falls Church, Va., 1990.

U.S. Chamber of Commerce, *1990 Analysis of Workers' Compensation Laws*, Washington, D.C., 1990.

U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items, Their Purposes and Legislative Backgrounds*, 3d ed., June 1987.

A complete reference list is included at the end of this Note.

This Note begins by describing the history and purposes of the civilian workers' compensation and military disability compensation programs. It then restricts the population considered in this Note by defining program eligibility. This background information sets the stage for a discussion of the two-stage compensation process, which requires (1) rating the severity of injuries or illnesses, and (2) calculating the compensation. Some examples of compensation awards are included to illustrate the differences between military and civilian compensation. Because claimants unsatisfied with their awards may appeal, it also explains their options. It then describes the various civilian options for insuring compensation for nonwork-related injuries and illnesses. Finally, it outlines trends in disability compensation from 1975 to the present and trends predicted for the future.

## II. HISTORY AND GOALS OF DISABILITY COMPENSATION PROGRAMS

### CIVILIAN WORKERS' COMPENSATION

Workers' compensation provides cash (also called indemnity) benefits, unlimited medical care for the claim, and rehabilitation services for workers who suffer work-related injuries and diseases. The medical care has no limits of any kind (duration, cost, or number of visits) and does not require copayments or a deductible.

Workers' compensation laws were enacted by most states during the early part of the 1900s. The workers' compensation system was designed to strike a balance between employers' and employees' interests by removing determinations of liability from the civil justice system. The purpose of the system was to ensure income protection for injured workers, while minimizing litigation.

The no-fault workers' compensation law is based on two principles: (1) the employer is liable for all injuries that arise out of and in the course of employment; and (2) the liability imposed on the employer by workers' compensation is *exclusive*. This second principle is known as the "exclusive remedy" principle; it means that no further liability can be assessed against the employer for an injury covered by the workers' compensation law.

The goal of workers' compensation was not to reimburse the worker for all losses but to provide substantial income protection until the worker could return to work. By replacing only a fraction of lost wages, the schedule of benefits provides an incentive to return to work. Workers' compensation assesses charges against employers without regard to fault. This is *not* because employers are presumed negligent. Rather, workers' compensation attempts to treat the inherent hazards of industrial employment as a cost of production. Workers' compensation law, then, mandates *certain but limited liability* for employers.

The U.S. Supreme Court's 1908 reading of the Constitution's interstate commerce clause precluded the passage of a federal compensation law for most private industry. In response to this and other early judicial rulings, the present system of workers' compensation is still basically state-operated. Because of contemporary constitutional interpretations, the workers' compensation laws passed by all but six states between 1911 and 1920 generally authorized elective coverage (i.e., employers were free to choose not to participate) and applied mainly to certain highly hazardous occupations.

Gradually, the programs increased the scope of protection and benefit levels. Even so, in 1968, 23 states still permitted elective coverage, 24 states had size-of-firm coverage exemptions that excused small firms from covering their employees, and 29 states completely

excluded farm workers from coverage. Although 46 states mandated that disabled workers receive some percentage of their working wage, caps on compensation prevented the disabled workers from receiving the designated percentage. (For example, a state with an average weekly wage of \$100 and a maximum weekly payment of \$50 could not produce the common wage replacement rate of 66-2/3 percent.) Although some occupational diseases were covered under the statutes, special restrictions on the types of illness covered and the amounts of recovery were commonplace (Darling-Hammond and Kniesner, 1980).

The 1970 Occupational Safety and Health Act created the National Commission on State Workmen's Compensation Laws. The commission was to be responsible for evaluating the current state programs and making recommendations for improvements. The 15 presidentially appointed members—representing insurance, workers' compensation administration, the law and medical professions, labor unions, and public and political members—worked during 1972 to achieve a remarkably comprehensive review of current programs.

The commission's 1972 *Report* included numerous recommendations, of which 19 were deemed essential. (Further information on the commission and the list of essential recommendations appear in Appendix A.) The views of the commission are referenced throughout this Note.

The commission articulated five commonly accepted objectives of a modern workers' compensation system:

- broad coverage of employees and of work-related injuries and diseases;
- substantial protection against interruption of income;
- provision for sufficient medical care and rehabilitation services;
- encouragement of safety; and
- an effective delivery system for benefits and services.

The commission's statement of objectives and its recommendations have shaped reform efforts and debate since 1972. In response to these recommendations, the states have enacted major reforms. (Appendix B provides the 1990 Department of Labor survey of state compliance with the 19 essential recommendations.) The average state complies with 12.23 of the 19 essential recommendations; compliance is exceptionally good in terms of offering unlimited medical care, covering occupational disease or illness, and not placing a time limit on rehabilitation. However, for some coverage and benefit-level issues, the states do not meet the commission's recommendations.

To encourage workplace safety, the commission recommended that private insurers be required to extend experience rating (i.e., base insurance rates on the history of injuries at the company) to as many employers as possible and to provide loss prevention services (to aid employers in identifying and correcting risk) to their clients. At most firms today, insurance ratings link premium payments to the company's accident rate, and insurance companies often provide loss prevention services. However, it is difficult to assess the specific effects of the insurers' practices on injury rates and workplace safety standards because other incentives affect employers' decisions about safety investments and practices.

Although the states mandate the terms of workers' compensation, the system is largely privately administered and funded.<sup>1</sup> The workers' compensation statutes require each employer to compensate disabled workers using specified formulas for benefits, but the employer may generally choose the financing mechanism to provide the specified benefits. In all but three states, employers that can meet state-established financial standards may self-insure against the risk of occupational injuries and illnesses. Nineteen states operate state funds, but only six of these are exclusive state funds that prohibit private insurance. In 1984, private insurance carriers were responsible for 59.3 percent of benefits paid, self-insurers for 20.3 percent, and state funds for 20.4 percent (Berkowitz and Burton, 1987).

#### **MILITARY/VA DISABILITY COMPENSATION**

In considering military disability compensation, one must consider the programs of both the military and the Veterans' Administration (VA).<sup>2</sup> This Note describes benefits available from both organizations to injured or ill uniformed service members.

Like civilian workers' compensation programs, military and VA programs provide cash benefits, unlimited medical benefits, and rehabilitation services. Military health care aims to return service members to either active-duty service or civilian life in as good condition as possible. The goal of military disability pay is to provide some measure of economic security for personnel whose duties necessarily expose them to the hazards of wartime and career military service (DoD: Office of the Secretary of Defense, 1987).

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<sup>1</sup>The primary organization for workers' compensation rate-making (i.e., the rates that employers pay to insurers for coverage) is the National Council on Compensation Insurance (NCCI), a private organization that is licensed by state insurance regulators in 30 states. Of the other 20 states, 13 have independent local rating organizations, 6 have exclusive state funds with rates set by the states, and the rates for Texas are established by state authority.

<sup>2</sup>A veteran is any person who has served on active duty. Many of the VA benefits described in this Note require that the veteran receive better than a dishonorable discharge from active-duty service.

The practice of providing special compensation to persons disabled while performing military service has a long history, dating back to the earliest enactments of the Congress. The system has evolved to include granting the military the power to separate personnel no longer fit for service and to compensate them through the disability compensation system. The disability retirement system and disability severance pay provisions in place today remain basically unchanged from those adopted under the Career Compensation Act of 1949. These provisions are described in detail in Section IV, "Compensation for Injury and Illness."

Both the military and VA disability compensation programs are national, in contrast to the largely state-based civilian workers' compensation. For a given service member's claim, the military and VA programs provide the same benefits in any state.

## **ELIGIBILITY FOR COVERAGE**

### **Civilian Workers' Compensation**

Effectively, workers' compensation coverage is "compulsory," and employees in all 50 states are covered. All states and the District of Columbia have workers' compensation laws. There are also three federal programs: the Federal Employees' Compensation Act (F.E.C.A.), the Longshoremen's and Harbor Workers' Compensation Act, and the Black Lung Benefit Fund established by the Coal Mine Health and Safety Act of 1969. The workers' compensation laws may stipulate either compulsory or elective coverage; only three states (New Jersey, South Carolina, and Texas) allow elective coverage. In these three states, employers that reject the act by not covering their employees lose three common-law defenses if they are sued: assumption of risk, negligence of fellow employees, and contributory negligence. Employers that are stripped of these defenses face great exposure. In sum, coverage is required by law or, where it is elective, employers find it economical to provide coverage.

More than 90 percent of workers are covered by the workers' compensation laws (Darling-Hammond and Kniesner, 1980). Some exemptions for very small businesses, called "numerical exemptions," still exist despite the commission's recommendation against them. Eleven states have exemptions for employers with as many as four or fewer employees to two or fewer employees. Casual workers and domestic workers are the remaining classes of workers that many states exempt from coverage (DoL: Employment Standards Administration, *State Workers' Compensation Laws In Effect On January 1, 1990 . . .*, 1990).

To be eligible for benefits under the workers' compensation system, normally an employee must experience a personal injury by accident *arising out of and in the course of employment*. To specify eligibility, "it is sufficient to restate two simple generalizations about

the treatment in workers' compensation laws of the causes of injuries or disease: eligibility is conditioned upon the presence of a work-related cause of injury or disease; and, with minor exceptions, once that cause is established, determination of whether the work-related cause was due to the employee's or employer's fault, and of whether there were also nonwork-related factors present, are irrelevant" (Berkowitz and Burton, 1987).

A well-established principle of workers' compensation is that employers must accept employees as they find them and compensate them for any exacerbation of a latent problem (Darling-Hammond and Kniesner, 1980). Not all employers require physical examinations to note pre-existing medical conditions when employees begin employment.

All states have second-injury funds, which are sometimes called subsequent-injury funds. The funds, designed to eliminate discrimination against disabled or previously impaired workers, remove the financial disincentives for employers hiring these types of workers. The funds pay the difference between the cost of any injury incurred and the cost of that injury, had there been no prior disability. However, commonly found limitations severely constrain the usefulness of the funds. These limitations include the requirement that the previous injury and/or the subsequent injury be a loss, or loss of use, of a specific body part and/or that the combination of prior and subsequent injuries result in permanent total disability (Worrall and Appel (ed.), 1985).

### **Military/VA Disability Compensation**

Defining eligibility for service members is a simple process. All active-duty members are covered for any injury. No service member may receive disability payments while on active duty, but members recuperating from injury continue to receive full pay, including allowances. Service members who are injured may be separated from service if they are not expected to recover so that they are medically fit for service. If they are deemed unfit for service, military members receive either military disability retirement or military disability severance pay. *Disability retirement pay* is a monthly payment that is adjusted annually for inflation and paid until the death of the service member. *Disability severance pay* is a one-time lump sum amount. Members with 20 or more years of service can retire. All other members with disabilities rated at less than 30 percent of total disability receive disability severance pay. Service members with disabilities rated at 30 percent or more and *eight or more* years of service receive disability retirement pay. Service members with disabilities rated at 30 percent or more and less than eight years of service may retire only if their disability is the *result of active duty*; if the disability was not the result of active duty, they

receive disability severance pay. Section IV, "Compensation for Injury and Illness," provides more explanation.

When they leave the services, members are eligible as veterans for benefits from the Veterans' Administration. In some cases (such as military disabled retired personnel), veterans may receive a combination of benefits from the military and the VA. The VA always reduces payments for disability by the amount the veteran receives from the military for disability.

Eligible incidents are injuries incurred or illnesses contracted *while a service member*. This "service-connected" requirement is solely a temporal restriction. By contrast, civilian workers' compensation includes the more restrictive "work-related" requirement, which relates to the cause of the injury or illness.

For work-related injuries and illnesses, it is appropriate to compare the military's disability compensation system to civilian workers' compensation. Were they in civilian jobs, military members would likely be covered by workers' compensation because they work in covered occupations for a large employer. In addition, because military members are covered by the same compensation system for off-duty periods as well as for on-duty periods, a full comparison of benefits must also consider other civilian coverage, such as Social Security, state, and private short-term and long-term disability programs.

Another point of contrast between the military and civilian systems is that the military does not have to accept an employee "as is." All entering personnel receive a physical examination. All prior medical conditions are noted; the applicant may be denied entry if judged to be physically unfit for service. The military has 120 days from the beginning of service to note any other medical conditions that did not appear in the physical examination of the new service member. Compensation will not be awarded by either the military or the VA for these pre-existing conditions or for their natural progression.

Table 1 provides a brief summary of eligibility for civilian and military/VA programs.

**Table 1**  
**Summary of Eligibility**

Disability Compensation Characteristic	Applies to Military/VA Programs	Applies to Civilian WC Programs
Provides cash, unlimited medical care for claim, and rehabilitation as basic benefits	Yes	Yes
Covers all workers	Yes	No (more than 90% are covered)
Covers work-related injuries	Yes	Yes
Covers nonwork-related injuries	Yes	No
Must accept employee "as is" and compensate for the progression of existing bodily defects	No	Yes



### III. RATING OF INJURIES

#### CIVILIAN WORKERS' COMPENSATION

The goal of the rating process is to determine the severity of the injury, in order to calculate the amount of cash compensation to be awarded. Only cash compensation is affected by the rated severity of the injury; the claimant is always entitled to unlimited medical benefits and rehabilitation for an eligible claim.

As an overview, the rating process works in two steps: (1) the claimant is examined by a physician, who determines the extent of disability; and (2) the state workers' compensation agency assigns the disability rating, based on the physician's report. Each of the states has a workers' compensation agency, which acts as a referee in determining whether the incident is work-related and what the rating shall be. The agency has final administrative responsibility for assigning the rating, based on the physician's report. The assigned rating may be changed only on appeal.

As a basis for rating, states may use any one or more of the possible consequences of the injury or disease: (1) impairment, (2) functional limitations, and (3) work or nonwork disability. The National Commission on State Workmen's Compensation Laws defined *impairment* to include any anatomical or functional abnormality or loss. A *functional limitation* is present when the worker has an impairment that prevents him or her from performing certain tasks, such as lifting heavy objects or bending down. *Disability* occurs when a functional limitation results in actual or potential wage loss.<sup>1</sup> Sometimes nonwork disability—the inability to participate in hobbies or other nonwork pursuits—may be considered by the states when rating.

According to the commission, the primary basis for awarding benefits should be disability, as opposed to impairment (in which the commission included functional loss). The commission viewed awards or impairment as more appropriate for negligence cases than for workers' compensation, the no-fault social insurance system.

Regardless of the basis the state chooses to use for rating, all workers' compensation claims may be classified as "temporary" or "permanent," and as "partial" or "total."

The National Commission considers "temporary" and "permanent" disabilities to be mutually exclusive. The temporary disability period extends from the time of injury to the

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<sup>1</sup>To estimate potential wage loss, the states may consider the worker's personal characteristics (such as age, education, occupation, and experience) and/or the labor market conditions in which the worker will have to compete for employment.

time of maximum medical improvement (MMI). The permanent period covers whatever disability persists after MMI. For each period, the disability may be either partial or total in severity. Disability is commonly categorized as temporary partial, temporary total, permanent partial, or permanent total. Defined in this way, the same disability could change from temporary to permanent. Most, but not all, states subscribe to these definitions. Locating the point of MMI can be problematic in practice. In response to this problem, some organizations and states establish a time limit for injuries considered *temporary total*. Again, the workers' compensation agency makes the final administrative decision, based on the physician's report, although the determination process may be initiated at the insurer's or employer's request. The decision may be appealed.

For convenience, both the Workers' Compensation Research Institute (WCRI) and the National Council on Compensation Insurance (NCCI) define temporary injuries as those injuries lasting one year or less. This commonly used definition is supported by the Social Security Administration's (SSA) definition of permanent injury and by workers' compensation claim characteristics. In making its determination for permanent total injury, SSA considers injuries lasting less than one year to be temporary, and those lasting more than one year to be permanent. Also, researchers at WCRI analyzed NCCI data<sup>2</sup> and found that most workers' compensation cases last one year or less, as shown in Table 2. Among claims lasting less than one year, WCRI found that most injuries lasted less than one month, as shown in Table 3.

**Table 2**  
**Duration of Workers'**  
**Compensation Claims**

Duration (years)	Cases (percent)
1 or less	95.2
1 to 2	2.4
2 to 3	0.9
3 to 4	0.4
4 to 5	0.3
Over 5	0.8

SOURCE: National Council on  
Compensation Insurance, 1987.

<sup>2</sup>NCCI compiled data called "Detailed Claim Information" (DCI) from randomly sampled indemnity claims taken from 16 states, with accident dates between January 1978 and July 1986.

**Table 3**  
**Duration of Temporary**  
**Disability Claims**

Duration (weeks)	Cases (percent)
1 or less	32
2 to 3	23
4 to 5	13
6 to 7	8
8 to 12	10
13 to 26	10
27 to 52	4

SOURCE: National Council on  
Compensation Insurance, 1987.

To continue with the discussion of rating, it is important to make a further distinction among claims. Depending on the type of injury (as opposed to duration or severity of injury), a claim may be either "scheduled" or "non-scheduled." An explanation of rating for both types of claims follows.

#### **Scheduled Injuries**

Most states have a set of "scheduled" injuries that are specifically mentioned in the workers' compensation laws. The schedule pairs a loss with its respective compensation and effectively awards compensation on an impairment basis. The schedule is essentially a relative value scale that places great value on the major members, the arm and leg, and lesser values on the parts of those members. The list of injuries on the schedule varies by state but tends to include losses, or losses of use, of parts of the body. Disfigurement may be included in the schedule. Injuries to the body trunk, internal organs, nervous system, and other body systems are generally not included in schedules. These are called "non-scheduled" injuries.

The typical schedule gives only maximum values for the complete loss of an extremity and does not define precisely any part of the body. Determining ratings for partial losses of members becomes challenging in this situation.

Many states include in their schedules presumptions for rating a claimant's disability as permanent total. Often, multiple losses are presumed to make the worker a permanent total disability case. States rating on the basis of wage loss condition a rating of permanent total on the inability to work in any capacity. The Social Security Disability Insurance program uses this same definition. Other states might also use this wage-loss definition of permanent total for non-scheduled disability cases.

Across states, the rating process for scheduled injuries is similar and straightforward, although the states are not consistent in their assessment of the relative value of the limbs specified. The value of an arm varies from state to state, as does the value of a leg. However, the value of minor members in relationship to the corresponding major member is fairly uniform.

Rating scheduled injuries is an easy process because the injuries are specified by the statutes. The schedule deals directly with compensation, without assigning the rating (or percentage) of impairment generally considered to be the product of the rating process. Beyond the problems of assessing partial losses, the rating process is almost synonymous with the compensation process.

### **Non-Scheduled Injuries**

Non-scheduled injuries are not specified in the statutes and are much more difficult to rate. Non-scheduled injuries generally include injuries to the body trunk, internal organs, nervous system, and other body systems.

Three general approaches predominate in rating these injuries; state programs employ any *one*. One approach is to relate the impairment to that of the "body as a whole," or to a totally disabled person. This approach requires that a percentage of disability be assigned. The process of assigning a percentage of disability comprises what is commonly thought of as "rating" and is the focus of this section. The other two approaches involve compensating for actual wage loss or for loss of earning capacity (potential wage loss). In practice, compensating for actual wage loss is the easiest method to apply. Here, as with scheduled injuries, the rating process and compensation process are one. Determining potential wage loss is a complicated and uneven process, which very few states attempt.

The American Medical Association (AMA) publishes the *Guides to the Evaluation of Permanent Impairment* to aid in relating the claimant's impairment to that of total disability to the "body as a whole." This publication, which is the most widely used of all such guides, is comprehensive, covering all body systems. No nonmedical factors that might affect future employment, such as employee personal characteristics or labor market conditions, are considered. Many states recommend that physicians use the AMA guide or other less widely used guides for rating non-scheduled injuries (such as the *Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment*, published by the American Academy of Orthopedic Surgeons). With the notable exception of larger states like New York and California, states generally do not require physicians to use any particular rating guide.

These larger states and states that have pioneered workers' compensation (such as Wisconsin and Michigan) generally have developed their own guides, which are required for use by physicians. For example, California does not have a listing of scheduled injuries in its statutes but instead has issued guidelines for evaluating all types of injuries. California's guidelines incorporate considerations for age and occupation (measures of potential wage loss) directly into the rating procedures.

For a little over half of the states, the employee is allowed to make the initial choice of physician (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990). Twenty-one states mandate that the employer may choose the physician. For some of these states, employees may be allowed to choose another doctor after waiting a time period specified in the law or if allowed by the state agency for workers' compensation.

The physician contributes to the uncertainty in rating criteria for non-scheduled injuries. In most states, the physician has wide latitude in choosing a rating schedule (if any) and in factoring in nonmedical factors that would affect employability, such as the worker's personal characteristics and labor market conditions.

The typical permanent disability case is contested,<sup>3</sup> including most non-scheduled cases and the difficult scheduled cases (Berkowitz and Burton, 1987). For these contested cases, the adversarial appeals process through the workers' compensation agency—or, in some states, through the courts—becomes the rating process. Physicians for both sides bring the issues just discussed into the proceedings. When comparing compensation for non-scheduled cases, *actual case outcomes* matter more than the *process* of rating because the process varies greatly by individual case.

There is great variation among states in rating non-scheduled injuries because of the lack of rating standards and paucity of physician direction.

## MILITARY/VA DISABILITY COMPENSATION

The military and the VA approach rating in the same manner as civilians, determining first whether the claim involves an eligible injury and then the severity of the injury. For ex-service members applying to the VA, the "service-connected" requirement must be tested by obtaining military records. For active-duty service members, all incidents are eligible.

Both the military and the VA use the VA *Schedule for Rating Disabilities* to rate all types of injuries. The VA schedule is comparable to the AMA guide in that both of them rate

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<sup>3</sup>According to NCCI claims data, 12.1 percent of all claims are for permanent disability, and 7.2 percent of all claims involve an appeal.

on the basis of impairment to the "body as a whole" and neither allows for nonmedical factors.

Unlike some states, neither the military nor the VA ever applies any wage-loss test as a basis for rating. Military and VA doctors are used exclusively.

For active-duty members, the rating process also involves "fit for service" and possibly temporary duty or reclassification determinations. During the reclassification process, doctors may consider nonmedical factors such as the need for certain specialties, the cost of retraining, and the general drawdown or buildup of the forces.

### **COMPARISON OF RATINGS**

Present in state and federal law are statutes requiring that where doubt exists in civilian workers' compensation and military/VA disability compensation cases, the case is to be resolved in favor of the claimant.

While the principles used by the military and VA in rating disability closely resemble those employed by the "body as a whole" states, the rating schedules differ between the military/VA and civilian programs. The same injury can be rated differently between programs.

Consider the example of the complete loss of an arm (above the insertion of the deltoid muscle). The AMA guide (the "body as a whole" guide recommended by many states) rates the injury at 60 percent for the preferred arm and 54 percent for the nonpreferred arm (American Medical Association, 1988). The VA schedule rates the injury at 90 percent for the major arm and 80 percent for the minor arm (Veterans' Administration, 1978).

Differences in rating are one of the sources contributing to differences in disability compensation. Other sources of difference between civilian and military disability compensation include different salaries on which compensation is based and different percentages for reimbursement, or compensation rates.

### **OCCUPATIONAL DISEASE**

#### **Civilian Workers' Compensation**

The laws of all states include coverage for occupational disease. The disease, as with injuries, must arise out of and in the course of employment. Generally, the compensation arrangements for occupational illness are the same as for occupational injuries ("illness" and "injury" are usually mutually exclusive terms in workers' compensation literature) and include unlimited medical care. Compensating for occupational disease is problematic

because there is very often a period of latency, which makes it difficult to establish "work-relatedness."

The states all have statutes of limitation within which claimants are supposed to file for workers' compensation. Key to these time limits is the point at which the time limit begins. The time limit may begin at either the *date of last exposure* or the *date the disease was discovered and recognized to be work-related*.

Forty-one states start their time limits for filing occupational disease claims at the date the disease was discovered and recognized to be work-related. Eight states use a combination of the definitions, generally either (1) specifying that time limits for diseases with known long latency will be based on date of discovery and all else will be based on date of last exposure, or (2) allowing claims to be filed within a time limit after the date of discovery, subject to a maximum period from the date of last exposure in which the claim must be filed, regardless of the date of discovery. Only two states base time limits solely on the date of last exposure.

When considering the length of time limits, remember that most states begin the limits at the time of the disease's manifestation. So, the time limits need only be long enough for the worker to submit a claim. For more than half of the states, the time limits are two years or more. Only two states (Louisiana and Nevada) have time limits of less than one year, and they both begin the time limits at the date of discovery of the disease. The remaining states have time limits of one year (U.S. Chamber of Commerce, 1990).

In many states, sections regarding specific occupational diseases are written directly into the workers' compensation laws. Generally, these laws prescribe extended periods for specified diseases known to have a long latency. They may also list presumptions regarding specific diseases, meaning that certain diseases will be presumed to be caused by working in certain occupations. The laws may specify restrictions (such as minimum exposure) regarding occupational disease claims resulting from exposure to coal dust, asbestos, silica, or radiation.

### **Military/VA Disability Compensation**

For active-duty military members, compensation for illness is handled in a way similar to that for injury. The VA schedule is used, as for injuries.

For ex-service members, latency becomes a problem just as it is for civilian workers' compensation. The service member must meet the "service-connected" requirement in order to be compensated. The requirement means simply that the illness *began* while the service member was on active duty, not that the illness was caused by or arose out of service.

The time limit for filing claims with the VA is based on the date of last exposure and extends one year past the end of service. Claims filed after the one-year period are accepted and reviewed, but the VA considers the “service-connected” requirement more difficult to establish after the one-year period.

Section 312 of Chapter 38 of the U.S. Federal Code establishes presumptions (of “service-connectedness”) for certain diseases and extends time limits for filing claims involving diseases of known long latency. This is comparable to civilian practices for handling occupational disease.

Table 4 provides a brief summary of ratings.

**Table 4**  
**Summary of Ratings**

Disability Compensation Characteristic	Applies to Military/VA Programs	Applies to Civilian WC Programs
Required by law to resolve doubt in favor of the claimant	Yes	Yes
May use wage loss to determine the extent of disability	No	Yes ( some states)
Uses impairment to “body as a whole” method for rating	Yes	Yes (some states)
Fully covers occupational disease	Yes	Yes



#### IV. COMPENSATION FOR INJURY AND ILLNESS

##### CIVILIAN WORKERS' COMPENSATION

Compensation is composed of a periodic payment and a duration of payments (a number of weeks). Usually, the payment is equal to the product of the rate of compensation multiplied by the worker's pretax earnings. The variation for compensation calculated on a wage-loss basis would simply be the product of the rate of compensation multiplied by the *difference* between pre- and post-injury pretax earnings. The rate of compensation is prescribed by law and is generally 66-2/3 percent. Three states stipulate a rate of 80 percent, which must be applied to *spendable* (that is, *after-tax*) earnings. All states stipulate maximum weekly payments, which limit the calculated payments. The calculations just described provide the maximum payments allowable according to state law (U.S. Chamber of Commerce, 1990). Workers' compensation benefits are nontaxable income.

##### Total Disability

In the case of total disability, either temporary or permanent, the claimant receives the maximum payment allowed by law. Payments for total disability are the same by either the general or the wage-loss calculation method because the post-injury wage is zero.

Time limits for temporary total disability awards exist. Thirteen states have placed statutory limits on the duration of temporary total disability; these limits are not linked to maximum medical improvement (U.S. Chamber of Commerce, 1990). Louisiana has the shortest allowed period (six months), but will allow extensions in six-month periods. Oklahoma has the next shortest period; it specifies a limit of 150 weeks, which may also be extended. All other states specify limits that are generally well in excess of 200 weeks, giving a claimant nearly four years to reach maximum medical improvement. At this point, permanent disability compensation would be considered for any remaining disability (U.S. Chamber of Commerce, 1990).

Generally, permanent total disability awards are for the duration of the disability. The state workers' compensation agency has final responsibility for determining whether the disability has ended, based on the most recent physician's report.<sup>1</sup> Only a handful of states limit the duration of permanent total awards. Five states specify time limits, without noting

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<sup>1</sup>Insurers or employers may request that the state agency have the client undergo a medical examination to determine whether the disability has improved or disappeared.

that extensions are possible. Another two specify dollar amount limits on total payment (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990).

### **Permanent Partial Disability**

For permanent partial disability claims, compensation is reduced in some way from compensation for total disability. Compensation may be reduced by either shortening the duration of payment or lowering the weekly payment. In most states, the duration of payment varies across the severity of disability, while the weekly payment remains unchanged.

Payment duration may be reduced in a variety of ways. In the workers' compensation law, scheduled losses are assigned a certain number of weeks of payment, depending on the injury. The scheduled loss is expected to be permanent, but the duration of payment is less than the duration of the disability because the disability is partial. Payment duration may also be reduced when rating on the basis of disability to the "body as a whole." The state determines the duration of payment (number of weeks) for total disability<sup>2</sup> and claimants with disabilities rated less than total receive payment for a proportionally shorter duration. An important input to this process is the percentage of disability, determined by the rating process discussed earlier.

Reducing the weekly payment is the other option for adjusting disability compensation from that for total to that for permanent partial. Calculating weekly payments on the basis of "wage loss" is the chief means of accomplishing this. Varying the amount of payment may also be achieved when rating on the basis of disability to the "body as a whole." For these claims, the rating process discussed above is important in establishing the percentage of disability. Instead of specifying a duration of payment for total disability as before, state laws establish a weekly payment for total disability, and proportionally less is awarded for partial disability. In these cases, payment generally extends for the duration of the disability.

### **State Program Types**

As discussed, compensation may be based on any of the consequences of disability: impairment (including loss of function), lost earning potential, and actual wage loss.

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<sup>2</sup>The payment duration for total disability may be used just for the purposes of calculating payment durations for partial disability claims, but it may also be used as the duration limit for non-scheduled total disability.

Compensating for scheduled losses and for disability to the “body as a whole” are means of compensating for impairment.

Most states compensate scheduled and non-scheduled injuries differently. Almost all states compensate scheduled injuries on an impairment basis, as previously described. States vary in the way they treat non-scheduled injuries. Many states compensate permanent partial non-scheduled cases on a wage-loss basis. The other common way of compensating these cases is to compensate them as a percentage of total disability (the “body as a whole” method). Appendix C shows methods of rating, and a few other metrics, for thirteen states, which will be used (with the exception of Florida) in the quantitative examples that follow.

A handful of states compensate scheduled and non-scheduled injuries in the same manner, effectively making no “scheduled” distinction among injuries.

A few states, such as Florida, compensate all injuries on a wage-loss basis. Florida also awards a nominal lump sum amount for scheduled injuries, in addition to the wage-loss benefits, which is not in strict keeping with the principles of wage loss (Florida Division of Workers’ Compensation, 1989).

A few states, such as Nevada, compensate all injuries on an impairment basis, for disability to the “body as a whole.” Nevada is also one of the few states mandating that payment for all levels of disability (total *and* partial) continue for the duration of the disability. Nevada compensates for permanent partial disability by reducing the periodic payment; a total disability claim is awarded 60 percent of the claimant’s average monthly wage, and a partial disability claim receives proportionally less (Alliance of American Insurers, 1988).

California also compensates all injuries on the basis of impairment to the “body as a whole,” but adds considerations for personal characteristics (such as age and occupation) that would affect the claimant’s opportunities in the labor market. Effectively, California compensates on both an impairment and lost earning-potential basis. Generally, states do not compensate for lost earning-potential because it is hard to identify (as a combination of impairment, personal characteristics, and labor market conditions). California compensates for permanent partial disability by reducing the payment duration; workers are allowed three to eight weeks of payment for each percentage point of disability, up to the maximum of 619.25 weeks for a worker with a 99.5 percent disability rating. The periodic payment is not adjusted for the severity of disability; all claimants receive the maximum award to which they are entitled by their wages (DoL: Employment Standards Administration, *State Workers’ Compensation Laws*, 1990).

All states set maximum allowable weekly payments. The maximums are typically specified as a percentage of the state average weekly wage, and they are generally allowed to rise automatically each year, with the state average weekly wage. For nearly all states, raising the maximums does not affect compensation for injuries that occurred in prior years. (By contrast, a claimant in California receiving the maximum weekly payment might receive more money if the maximum is raised; however, the claimant would have to request an increase from the insurer and possibly undergo another medical examination.) Three states set the maximum below 66-2/3 percent of the state average weekly wage. Twenty states set the maximum between 66-2/3 and 90 percent, nineteen states set the maximum at 100 percent, and eight set the maximum above 100 percent (U.S. Chamber of Commerce, 1990).

Workers' compensation cash benefits for scheduled losses interact with other workers' compensation cash benefits differently. Most states (all but five) do not subtract compensation for *temporary total* disability from scheduled loss payments for *permanent disability*. However, some additional restrictions on the duration of the *temporary total* disability payments may apply in the case of scheduled loss (U.S. Chamber of Commerce, 1990). By contrast, most states make scheduled benefits exclusive, so that if an injury is covered by the schedule, only the scheduled benefits may be claimed. Some states have non-exclusive scheduled benefits or, as discussed before, do not distinguish "scheduled" injuries when compensating (Berkowitz and Burton, 1987).

Typically, compensation is awarded on the basis of the claimant's wages at the time of injury and is never increased. As a result, the benefits are usually eroded in real terms over the years they are paid, by both inflation and the lack of accounting for the probable increased productivity of the worker. Only 15 states have some type of automatic increase in benefits to account for the increases in the cost of living (U.S. Chamber of Commerce, 1990). Most adjustments are provided by special state funds established for this purpose. The adjustments generally apply only to survivors' death benefits and benefits for the permanently totally disabled (Worrall and Appel (eds.), 1985).

Fewer than ten states require that additional payments be made for dependents. In these few states, insurers generally pay allowances for dependents only in the case of total disability, not in the case of partial disability. In all cases except one, the payments are less than \$10 per week for each dependent (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990).

Workers' compensation benefits are nontaxable income. The value of the tax shield varies by the tax bracket and filing status of the individual worker. Under the typical workers' compensation benefit structure (66-2/3 percent of pretax wages replaced, subject to

a maximum of 100 percent of the state average weekly wage and a nominal minimum), most workers receive 80 to 100 percent of their nominal after-tax income (DeVol, 1985).<sup>3</sup>

All workers' compensation programs have waiting periods before workers become eligible for cash benefits. The waiting periods do not apply to medical care, which is furnished from the first day of injury. Waiting periods vary by state and last anywhere from three to seven days. Some states stipulate that waiting periods be terminated if the worker is hospitalized. All states pay benefits retroactively for the waiting period if the disability continues beyond a stipulated period after the date of injury. This period is called a *retroactive period* and typically extends for two weeks or longer (U.S. Chamber of Commerce, 1990).

Compensation may be awarded in periodic payments or as a lump sum. States place various restrictions on paying lump sums. For example, Florida makes use of one-time lump sum payments (in addition to payment for wage loss) when compensating scheduled losses. Benefits are always stated as periodic payments, but they may occasionally be paid as a one-time lump sum (DeVol, 1986). According to claims data compiled in 1987 by the National Council on Compensation Insurance (NCCI), benefits are paid as a lump sum in 11.8 percent of all cases involving cash compensation. A combination of lump sum and periodic payments is used in 2.4 percent of cases, with periodic payments being used in the majority (85.8 percent) of cases.

#### **MILITARY/VA DISABILITY COMPENSATION**

The VA schedule, which compensates for disability to the "body as a whole," assigns a rating for every disability. Service members on active duty may not receive disability payments. Upon separation, the service member becomes eligible for compensation through the VA. If the separation is due to disability, the ex-service member will be paid either military retirement for disability or disability severance pay (if unable to qualify for disability retirement).

The military's process of compensating a service member who is to be separated for disability is illustrated in Appendix D and was described in the "Eligibility for Coverage" discussion in Section II. Basically, the process involves consideration of the severity of disability and length of service. Table 5 shows the formulas to calculate payment and summarizes eligibility for those military members separated from the service for disability.

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<sup>3</sup>This is the typical replacement of lost income for temporary total disabilities lasting less than one year. Most disabilities are in this category, so this replacement rate is typical for most disabilities.

**Table 5**  
**Military Disability Compensation**

Dimension	Disability Severance Pay	Disability Retirement Pay
Pay type	One-time lump sum	Monthly payment
Formula	Min [BPx2xYOS, BPx24]	Max [(BPrg)x(%dis), (BPrg)x(2.5%)xYOS]
Eligible	>if disability rated less than 30%, except if 20 or more YOS >if disability rated at 30% or more but less than 8 YOS and disability is <i>not</i> the result of active duty	>if 20 or more YOS, regardless of disability rating. >if disability rated at 30% or more and either 8 or more YOS or disability is the result of active duty.
Where	BP = Highest monthly basic pay of any grade in which the member served satisfactorily, YOS = Years of active service, BPrg = Monthly basic pay in retired grade, and %dis = Percentage disability.	

SOURCE: Sol Gordon (ed.), *1990 Uniformed Services Almanac*, Falls Church, VA, 1990.

The difference between disability retirement pay figured on the basis of years of service and that figured on the basis of disability is taxable (Gordon, Sol (ed.), 1990).

Upon separation from the service, all service members, including the disabled, are entitled to a travel allowance. The travel allowance consists of a per diem and mileage reimbursement to cover the costs of moving from the place where separated to the home of record at entry (or the place where the member was accepted or entered service). If retiring, the member may select any place in the United States as the destination. Additional payments may also be made for dependent travel.

VA disability compensation is available to all veterans. These awards are supplemental to the regular services and benefits (such as educational assistance or home loans) provided to veterans by the VA. Monthly payments are payable for service-connected disabilities ranging in severity from 10 to 100 percent. VA payments are based solely on disability; they are not based on rank, pay grade, or years of service. All veterans, regardless of the date of injury or date of claim, receive the same amount for a given percentage of disability. The VA schedule prescribes additional monthly payment for seriously disabled veterans. Additional allowances for dependents are paid to veterans with disabilities rated at 30 percent or more. Disabled veterans choosing to accept compensation from the VA must forfeit, dollar for dollar, their military disability compensation for severance or retirement.

The VA awards more than proportionally more for serious disabilities. As of December 1, 1987, the pay shown in Table 6 was effective for all veterans. (The last column shows the ratio of compensation for a given percentage of disability to that for total disability.)

In addition to payment for impairment to the "body as a whole," the VA also pays monthly compensation for certain scheduled injuries. For instance, the VA schedule assigns a rating of 90 percent disabled for the loss of the major arm (Veterans' Administration, 1933). With no dependents, a service member who loses the major arm would be paid \$849 per month because the member is 90 percent disabled, and an extra \$63 per month for the scheduled loss of one hand.

Military disability retirement benefits are adjusted each year based on increases in the Consumer Price Index (CPI). VA disability compensation is also adjusted for increases in the cost of living.

Cash benefits from the VA for disability are always completely tax-free. Military payments for disability (both retirement and severance pay) are *not* exempt from federal taxation unless the disability is combat-related or the service member began service before September 24, 1975. Also, as mentioned above, the difference between disability retirement calculated on the basis of years of service and that calculated on the basis of disability is always taxable. A service member who chooses to receive military disability compensation either for severance or for retirement may exclude from the gross income an amount equal to the VA compensation for which the member is eligible.

**Table 6**  
**VA Compensation for**  
**Disability, as of 1987**

Disability Rating	Compensation (\$/mo)	Comp(x%)/ Comp(100%)
10%	\$ 71	5.0%
20%	133	9.4%
30%	202	14.3%
40%	289	20.5%
50%	410	29.1%
60%	516	36.6%
70%	652	46.2%
80%	754	53.4%
90%	849	60.2%
100%	1,411	100.0%

SOURCE: 1990 *Uniformed Services Almanac*.

## **DEATH BENEFITS FOR SURVIVORS**

### **Civilian Workers' Compensation**

Death benefits consist of weekly cash benefits, in addition to a burial allowance. Payments for death benefits are generally made to the spouse until remarriage and to the children until a specified age. Some laws stipulate limits to death benefit payments, either in the form of a maximum benefit payout or a maximum period for payment. Compensation rates are generally the full 66-2/3 percent of the worker's average earnings. Often, a two years' (sometimes less) lump sum is payable upon remarriage. Burial allowances range from \$700 in Delaware (although extra expenses may be approved by Delaware's Industrial Accident Board) to \$5,000 in Georgia, Nevada, and Rhode Island. Thirty-seven states stipulate maximum burial allowances of \$2,000 or more (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990).

### **Military/VA Disability Compensation**

The VA pays Dependency and Indemnity Compensation (DIC) to the survivors of military personnel who die in the line of duty while on active duty or active duty for training, and in some cases during inactive duty for training. DIC may also be paid when death occurs following the types of service just mentioned, if death is due to a service-connected disability. For the cases just mentioned, a death gratuity may be paid by the appropriate military service. The death gratuity is \$6,000. If the veteran was totally disabled before death because of a service-connected disability, DIC may be paid in the event of death, regardless of whether the death was service-connected. Benefits are authorized for spouses and dependent children. The compensation rate that the spouse receives depends on the military member's highest rank. Additional amounts are paid for dependent children. In 1988, these payments amounted to about \$63 per month for minors and \$133 per month for eligible dependents between the ages of 18 and 23. DIC eligibility does not affect eligibility for Social Security and vice versa.

The VA pays allowances if a veteran dies who is eligible for compensation from the VA (as are all disabled veterans). For service-connected deaths, an allowance of \$1,500 is available to reimburse actual burial expenses. If a veteran eligible for VA disability compensation has a non-service-connected death, a \$300 burial allowance may be paid and a plot/interment allowance of \$150 may be available. A headstone allowance of \$85 is available for veterans' graves. Alternatively, veterans may be buried in national cemeteries and furnished with a headstone or grave marker, at no cost to the family.



The Survivor Benefit Plan (SBP) may supplement DIC paid to families of retired service members in the case of a service-connected death. SBP is taxable and offsets both DIC and Social Security payments. At retirement, all military members are automatically enrolled and billed monthly for maximum coverage under SBP, unless they specifically refuse or lower their coverage. Maximum coverage provides survivor annuities of up to 55 percent of the member's *retired* pay. The annuity automatically decreases to 35 percent of the covered amount (the maximum and default option being the member's retired pay) when the survivor reaches age 62; this avoids overlap with the benefit that Social Security provides. SBP is adjusted by CPI in the same manner as is retired military pay.

Additionally, survivors of military members are eligible for other benefits. Survivors continue to be eligible for medical care through CHAMPUS or CHAMPVA (if not eligible for CHAMPUS or Medicare). For each dependent of veterans who are totally disabled or die from a service-connected disability, an educational or special restorative training assistance allowance of up to \$376 per month for full-time training may be paid for a maximum of 45 months.

#### **COMPARISON OF COMPENSATION PROGRAM DIFFERENCES**

In comparing civilian and military/VA compensation for work-related disability, it is important to note that neither the military nor the VA ever uses a wage-loss approach. Some states choose to use a wage-loss approach in order to compensate non-scheduled claims, even if they use the scheduled approach (basically an impairment basis) to compensate loss, or loss of use, of a limb.

Another key difference between the compensation systems is that military disability retirement and VA disability compensation payments continue for the duration of the disability, whereas most civilian disability compensation (with the exception of permanent total disability compensation) continues for only a specified number of weeks. The large difference in payment durations greatly affects compensation when compared on the basis of total payout. Also, military and VA payments are not limited by any maximum, but depend on the member's own earnings (military) or percentage disability (VA).

The other key differences in approach are the military's and VA's practice of making yearly adjustments to account for inflation and the VA's use of allowances for dependents. Both practices are rare in civilian workers' compensation. And for long-term disability, the military's and VA's yearly increases in compensation to reflect increases in the CPI make a big difference.

Finally, taxes and the availability of general health insurance—while external to both the military/VA and the civilian disability compensation programs—affect the value of total compensation to the claimant. There are important differences between military/VA and civilian program beneficiaries.

Workers' compensation benefits and VA benefits are never taxable, whereas military benefits are taxable if the disability is not combat-related and if the service member entered the service after September 24, 1975. The loss in income from taxes on military benefits is lessened by excluding from gross income the amount of VA compensation to which the member is entitled.

Unlimited medical care for the eligible claim is available to participants of both systems; however, options for general health care differ between veterans and civilians. For total disability lasting longer than one year, the Workers' Compensation Research Institute (WCRI) has found that two-thirds of workers' compensation beneficiaries lose their employer-paid medical insurance (DeVol, 1986). These workers must cover medical insurance on their own. Most ex-service members have some means of obtaining free or reasonably priced health care. Retired military are assured health care through CHAMPUS or a military treatment facility. Veterans rated 50 percent or more disabled are entitled to general health care at VA hospitals. As a last resort, the VA provides care to all indigent veterans. In 1988, the annual income limitations were \$15,195 for a veteran without dependents and \$20,260 for a veteran with one dependent (add \$1,013 for each additional dependent) (Gordon, Sol (ed.), 1988).

Table 7 provides a brief summary of compensation program differences.

**Table 7**  
**Summary of Compensation Program Differences**

<b>Disability Compensation Characteristic</b>	<b>Applies to Military/VA Programs</b>	<b>Applies to Civilian WC Programs</b>
Stipulates maximum periodic payment	No	Yes
Places time limits on compensation without regard to duration of disability	No	Yes, in most states
Provides nontaxable cash benefits	Yes (if from VA); No (if from military and injury is non-combat-related and member entered service after Sept. 24, 1975)	Yes
Increases cash benefits for inflation	Yes	Rare
Provides allowances for dependents	Yes (if from VA, for veterans with disabilities rated at 30% or more); No (if from military)	Rare

## V. EXAMPLES OF COMPENSATION

### CONTEXT FOR COMPENSATION EXAMPLES

In making quantitative comparisons for a few specific cases, this section focuses on *scheduled losses* (involving the loss or loss of use of one of the limbs, hearing, or vision) that are *permanent in duration* and *partial in severity*. It is important to look at permanent partial cases because they are relatively common and costly. Permanent total cases are costly but rare. Temporary total cases are by far the most common; the compensation for them is so simple that the cases can be compared easily, without the use of examples. Temporary partial cases are not discussed because they do not typically involve cash compensation. Claims data compiled in 1987 by the National Council on Compensation Insurance (NCCI) drive these conclusions, as shown in the following tables. Table 8 shows the relative frequency of injuries, by severity. Table 9 shows the relative cost of claims, by severity.

This section focuses on scheduled losses, as opposed to other types of losses, to highlight the differences between the military and civilian disability compensation systems. Compensation for non-scheduled injuries depends heavily on the specifics of the individual case, which reduces its value in emphasizing program differences.

This comparison in particular, as well as this Note in general, considers only the *value of compensation to the beneficiary* and is not concerned with the *program's cost to the provider*. For this reason, it does not explore issues such as the mix of injuries faced by military and civilian programs, whether the mix of injuries faced by the military/VA program differs from the mix faced by civilian workers' compensation programs, and the implications of any difference.

**Table 8**  
**Composition of Claims,**  
**by Severity**

Claim Type	Cases (percent)
Temporary total	87.6
Permanent/temporary partial	11.1
Permanent total	1.0
Fatal	0.3

SOURCE: National Council on Compensation Insurance, 1987.

**Table 9**  
**Cash Benefit Intensity, by Severity**

Claim Type	Cash Benefit Intensity
Temporary total	0.51
Permanent/temporary partial	3.36
Permanent total	10.24
Fatal	17.52
All benefit types	1.00

SOURCE: National Council on Compensation Insurance, 1987.

NOTE: The cash benefit intensity is the ratio of the average cash benefit for a particular type of claim to the average cash benefit.

This section compares disability compensation for a few cases of equally skilled civilian and military workers to illustrate the differences between the military and civilian compensation systems. In a broad sense, the examples reflect the differences between the systems that might be expected for a wide variety of cases. However, because the comparison is made on a case-by-case basis, the analysis should not be construed as a precise estimate of the overall differences in compensation under the systems. Such an estimate would require detailed information about each state's schedules and procedures; that goes far beyond this Note's rudimentary examination of the basic compensation procedures for a subset of the states. Still, the examples and states chosen are fairly indicative of what could be expected from a detailed, comprehensive study.

In the examples, military members are assumed to be at the point of separation from service for disability; they will receive either severance pay or retirement pay. The available measures of education, years of service, and occupation are used to approximate an indication of skill.

In choosing worker types, the first consideration was what kinds of workers might be relevant for the military. Two cases each for an enlisted person and an officer were selected: first, a fairly new service member with two to three years of service, unmarried, with no dependents; then, a more experienced member with eight to ten years of service, married, with two dependents. These categories yielded four types of people. Tabulations of data received from Defense Manpower Data Center were then examined to choose the most common educational levels, ranks, occupations, and ages for these four categories. Rank and years of service were used to determine basic monthly pay, which is used in the comparisons after conversion to weekly pay (by multiplying monthly pay by 12/52).

Education, occupation, and age from the Current Population Survey (CPS) data on civilians were then used to determine weekly wages for comparably skilled civilians. Years of service were inferred for civilians by subtracting the total of 18 plus the number of post-secondary education years (four for a Bachelor's degree) from age. All data are from 1988. Table 10 describes the four categories of workers.

Even though workers' compensation is made at the state level, national wage data are used to avoid considerations of different costs of living across states and to be comparable to military wage data, which are at the national level. However, the calculated payments are truncated by the 1988 state maximums in order to highlight those cases where all workers in the state effectively receive a certain amount because the maximums are so low (such as in New York and California). Although only the 1990 (not 1988) maximum payments for Michigan and Nevada were available, the compensation for these states is shown anyway

**Table 10**  
**Worker Categories**  
**(\$/WK, 1988)**

	High School Only	Bachelor's Degree Only
	Category 1	Category 2
2-3 years of service	Age ≤ 21, single, no children, crafts/mechanics/production worker. (Military rank is E-3, enlisted, Private First Class/N-Seaman)	Age 22-26, single, no children, professional/manager. (Military rank is O-1, officer, Second Lieutenant/N-Ensign)
Weekly basic pay (military):	\$190	\$309
Wages for similarly skilled civilians:	\$262	\$483
	Category 3	Category 4
8-10 years of service	Age 27-31, married, two children, crafts/mechanics/production worker. (Military rank is E-5, enlisted, Sergeant/N-Petty Officer 2nd Class)	Age 27-31, married, two children, professional/manager. (Military rank is O-3, officer, Captain/N-Lieutenant)
Weekly basic pay (military):	\$271	\$563
Wages for similarly skilled civilians:	\$456	\$643

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: (1) Wages are for selected categories of white males. (2) Military Basic Monthly Pay is used, rather than Regular Monthly Compensation, because it is used in the calculations for disability compensation. It has been converted to a weekly wage by multiplying by 12/52.

because they were the only examples of payment based on *spendable* (or after-tax) earnings (Michigan) or permanent *partial* payments paid for the duration of disability (Nevada).

Compensation is shown for the following states: California, Colorado, Georgia, Michigan, Missouri, Nebraska, North Carolina, New Jersey, Nevada, New York, Texas, and Wisconsin. These states were chosen to represent major regions of the United States, industrial and rural states, large and small states (in terms of population), and major program types for workers' compensation. The benefits stipulated by this selection of states are indicative of the range of benefits provided across all states. At one end of the spectrum, Michigan and North Carolina mandated the most generous benefits. At the other end, Colorado and Georgia stipulate some of the least generous benefits. By including California, New York, Texas, Illinois, and New Jersey—states with large populations, which account for a significant fraction of the U.S. population—the examples of compensation should apply, given similar skill characteristics and injury circumstances, to much of the United States.

The injuries chosen include two severe injuries: the complete loss of the major arm and the complete loss of a leg, which are rated at 50 percent or more by both the AMA guide and the VA schedule. The injuries chosen also include two less severe injuries: the loss of an index finger and moderate emphysema, which are rated at less than 50 percent by both the AMA guide and the VA schedule. The losses of limb are examples of a scheduled injury, while emphysema is an example of a non-scheduled illness.

Two of the examples involve service members with two to three years of service. These members will be eligible for military disability retirement for disabilities rated at 30 percent or more, *only if* the disability was the result of performing active duty or incurred in the line of duty. Members not able to retire will be separated with disability severance pay and will be eligible for benefits from the VA. For these two cases, one should pay special attention to disability severance pay and VA compensation because the service member may not be eligible for disability retirement from the military. In the other two examples, the service members have eight to ten years of experience and will be eligible for military disability retirement for disabilities rated at 30 percent or more, which is the case in the examples; they do not receive disability severance pay.

When looking at the examples, note that the VA always reduces payments for disabilities by the amount the veteran receives from the military for disability. In the examples of compensation for specific cases, the disability severance payments paid by the military must be "recouped" by the VA before the VA can begin to make its own payments for disability. VA and military benefits are *not* additive.

## **COMPENSATION FOR TEMPORARY TOTAL INJURIES**

It is not necessary to look at numbers from the examples to compare programs for temporary total compensation, which generally involves some portion of all claims, before maximum medical improvement is reached. Temporary total cases (with no subsequent impairment) are by far the most prevalent type of disability claim. Consider the common case of temporary total disabilities, which last 52 weeks or less and end with a full return to work. In this situation, the military member would be better off than the civilian worker because the service member suffers no cut in pay or allowances. The civilian counterpart usually retains between 80 and 100 percent of spendable (after-tax) earnings, depending on income tax bracket and filing status. All claimants receive full medical care for the injury. Civilian workers do not generally lose employer-paid fringe benefits (DeVol, 1985). If recovery for service is forecast, military members may remain with full pay and allowances in military treatment facilities for 12 to 15 months at the physician's discretion and even longer, with special extensions.

## **COMPENSATION FOR PERMANENT PARTIAL INJURIES**

Tables 11 and 12 show compensation for the loss of a major arm or leg, for the four worker categories. The tables show that for severe disabilities (such as the loss of a major arm or leg), VA payments are generally as good as or better than workers' compensation benefits and are of unlimited duration. Civilian workers' compensation for either injury generally stops payments within five years. In terms of total payout, compensation from the military/VA is much greater than compensation under workers' compensation because of the vast difference in payment duration. For higher paid service members, military disability retirement supplements VA payments to create a combination that is generally higher than civilian benefits. For non-combat-related injuries, the portion of military disability retirement that exceeds the corresponding VA compensation is taxable.

For either of the severe disabilities to a service member in the highest-paid category (Table 10), the after-tax comparison is as follows:

- Military disability retirement is \$422 per week.
- VA compensation is \$250 per week.
- The difference is \$172 per week and is taxable.
- Assuming conservatively that one-third of the difference is lost to taxes, \$115 per week of the difference remains.



**Table 11**  
**Compensation for Loss of a Major Arm or Leg,**  
**Worker Categories 1 and 2**  
**(\$/wk, unadjusted for taxes, 1988)**

	Major Arm	Leg		
VA rating	90%	90%		
AMA rating	60%	50%		
	Compensation		Duration (weeks)	
	Cat 1	Cat 2	Arm	Leg
<b>Military(a):</b>				
Disab. severance(b)	4,125.00	6,696.00	LS(c)	LS
Disab. retirement	143.00	232.00	DD(d)	DD
VA compensation	210.00	210.00	DD	DD
<b>State WC:</b>				
CA	140.00	140.00	421.25	461.25
CO	150.00	150.00	208	208
GA	174.75	175.00	225	225
MI	159.00	279.00	269	215
MO	174.60	174.60	232	207
NE	174.75	245.00	225	215
NC	174.75	283.20	240	200
NJ	183.49	338.44	330	315
NV(e)	94.37/78.64	174.05/145.04	DD	DD
NY	150.00	150.00	312	288
TX	174.75	224.00	240	200
WI	117.00	117.00	500	500

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: (a) Because the VA rating for the loss of an arm is the same as for the loss of a leg, military disability retirement will be the same for both losses, as will VA compensation. (b) Because these members have fewer than 8 years of service, they may be ineligible for retirement if the injury is not the result of active duty, in which case they would be eligible only for disability severance and VA compensation. (c) LS denotes lump sum. (d) DD denotes duration of disability. (e) Nevada pays differently for different losses, unlike most states. Compensation for the loss of an arm is presented first.

- Total compensation is then \$365 per week, which is more generous than compensation allowed by most states.

For less-severe injuries (such as the loss of an index finger or moderate emphysema), the comparison requires more work. Compensation for these injuries is shown in Tables 13 and 14. VA compensation for less-severe injuries decreases more than proportionally to the decrease in rating for severe injuries, while civilian workers' compensation generally provides the same compensation per week for all injuries, regardless of severity. However, workers' compensation payments for lesser injuries are for greatly reduced periods, typically

**Table 12**  
**Compensation for Loss of a Major Arm or Leg,**  
**Worker Categories 3 and 4**  
**(\$/wk, unadjusted for taxes, 1988)**

	Major Arm	Leg		
VA rating	90%	90%		
AMA rating	60%	50%		
	Compensation		Duration (weeks)	
	Cat 3	Cat 4	Arm	Leg
Military(a):				
Disab. severance(b)	—	—	—	—
Disab. retirement	203.00	422.00	DD(c)	DD
VA compensation	250.00	250.00	DD	DD
State WC:				
CA	140.00	140.00	421.25	461.25
CO	150.00	150.00	208	208
GA	175.00	175.00	225	225
MI	290.00	399.00	269	215
MO	174.60	174.60	232	207
NE	245.00	245.00	225	215
NC	283.20	283.20	240	200
NJ	319.42	369.75	330	315
NV(d)	164.28/136.90	231.6/42.46	DD	DD
NY	150.00	150.00	312	288
TX	224.00	224.00	240	200
WI	117.00	117.00	500	500

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: (a) Because the VA rating for the loss of an arm is the same as for the loss of a leg, military disability retirement will be the same for both losses, as will VA compensation. (b) There is no disability severance pay for service members with 8 or more years of service. All members are entitled to retirement pay. (c) DD denotes duration of disability. (d) Nevada pays differently for different losses, unlike most states. Compensation for the loss of an arm is presented first.

less than one year for the loss of an index finger and about two years for moderate emphysema. Payment by the military or the VA extends for life.

To compare compensation between programs, it is necessary to consider total payout. Because total payout occurs over a series of years, the payments are discounted using a moderate annual rate of 10 percent. To discount the military payments, which are paid for life, the approximation for an annuity is used. (Annuity divided by the annual rate is approximately equal to the present value of total payout.) Technically, the annuity formula assumes payment over an infinite number of years, but it is effectively not much different

**Table 13**  
**Compensation for Loss of Index Finger or**  
**Moderate Emphysema, Worker Categories 1 and 2**  
**(\$/wk, unadjusted for taxes, 1988)**

	Index Finger	Emphysema-Mod		
VA rating	30%	30%		
AMA rating	11%	35%		
	Compensation		Duration (weeks)	
	Cat 1	Cat 2	Ind Fin	Emph-Mod
<b>Military(a):</b>				
Disab. severance(b)	4,125.00	6,696.00	LS(c)	LS
Disab. retirement	57.00	93.00	DD(d)	DD
VA compensation	47.00	47.00	DD	DD
<b>State WC:</b>				
CA	140.00	140.00	24	180.75
CO	150/120(e)	150/120(e)	26	—(f)
GA	174.75	175.00	40	105
MI	159/WL(e)	279/WL(e)	38	WL(g)
MO	174.60	174.60	45	140
NE	174.75	245.00	35	105
NC	174.75	283.20	45	105
NJ	183.49	338.44	50	—(f)
NV(e)	17.30/55.05	31.91/101.53	DD	DD
NY	150/WL(e)	150/WL(e)	46	WL
TX	174.75	224.00	44	140
WI	117.00	117.00	60	—(f)

SOURCE: 1988 Uniformed Services Almanac; 1988 Current Population Survey data.

NOTES: Emphysema is a non-scheduled illness. Non-scheduled injuries are difficult to compare between schedules. Compensation shown for emphysema is approximate. (a) Because the VA rating for the loss of an index finger is the same as for moderate emphysema, military disability retirement will be the same for both losses, as will VA compensation. (b) Because these members have fewer than 8 years of service, they may be ineligible for retirement if the injury is not the result of active duty, in which case they would be eligible only for disability severance and VA compensation. (c) LS denotes lump sum. (d) DD denotes duration of disability. (e) Compensation for emphysema is presented second. (f) States without durations for compensation of emphysema give great weight to the specific characteristics of the individual case. (g) WL denotes that compensation is figured on a wage-loss basis.

from payments lasting 30 or more years.<sup>1</sup> For the categories of workers selected (the oldest of whom is 31), it is reasonable to assume that payments would last 30 or more years. In discounting the civilian payments, the best case for payment is assumed—that payments extend for two years. The lowest possible payment for military disability is used: \$47 per week for a service member with no dependents who was unable to retire from the military. For the civilian payment, the moderate-to-good reimbursement of \$250 per week is used.

<sup>1</sup>At a 10 percent discount rate, the factors to convert equivalent uniform annual cash flows lasting 20, 30, and 100 years into present values are, respectively, 8.932, 9.891, and 10.491 (Grant, 1982).

**Table 14**  
**Compensation for Loss of Index Finger or Moderate**  
**Emphysema, Worker Categories 3 and 4**  
**(\$/wk, unadjusted for taxes, 1988)**

	Index Finger	Emphysema-Mod		
VA rating	30%	30%		
AMA rating	11%	35%		
	Compensation		Duration (weeks)	
	Cat 3	Cat 4	Ind Fin	Emph-Mod
Military(a):				
Disab. severance(b)	—	—	—	—
Disab. retirement	81.00	169.00	DD(c)	DD
VA comp	60.00	60.00	DD	DD
State WC:				
CA	140.00	140.00	24	180.75
CO	150/120(d)	150/120(d)	26	—(e)
GA	175.00	175.00	40	105
MI	290/WL(d)	399/WL(d)	38	WL(f)
MO	174.60	174.60	45	140
NE	245.00	245.00	35	105
NC	283.20	283.20	45	105
NJ	319.42	369.75	50	—(e)
NV(d)	30.12/95.83	42.46/135.10	DD	DD
NY	150/WL(d)	150/WL(d)	46	WL
TX	224.00	224.00	44	140
WI	117.00	117.00	60	—(e)

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: Emphysema is a non-scheduled illness. Non-scheduled injuries are difficult to compare between schedules. Compensation shown for emphysema is approximate. (a) Because the VA rating for the loss of an index finger is the same as for moderate emphysema, military disability retirement will be the same for both losses, as will VA compensation. (b) There is no disability severance pay for service members with 8 or more years of service. All members are entitled to retirement pay. (c) DD denotes duration of disability. (d) Compensation for emphysema is presented second. (e) States without durations for compensation of emphysema give great weight to the specific characteristics of the individual case. (f) WL denotes that compensation is figured on a wage-loss basis.

Taxes can be ignored because both VA and workers' compensation payments are nontaxable.

The comparison is as follows:

$$\text{VA: } (\$47/\text{wk} \times 52 \text{ wks})/0.1 = \$24,440^2$$

$$\text{Civilian: } (\$250/\text{wk} \times 52 \text{ wks}) \times (1 + 1/1.1) = \$24,818$$

<sup>2</sup>The VA increases the payment annually for inflation. If the adjustment is 3 percent, the effective discount rate becomes 7 percent, not 10 percent. After adjusting for an annual increase for inflation, the present value of the total payout would be \$34,857.

Because the comparison involves a very conservative military case (without adding the increased payments for inflation) and an above-average civilian case and the total payouts appear even, one must conclude that the military member is compensated better than the civilian for minor injuries. However, the civilian receives more money immediately after the injury, probably when it is most needed.

### COMPENSATION FOR PERMANENT TOTAL INJURIES

For permanent total disability compensation (shown in Table 15), VA payments generally exceed payments under workers' compensation. Payments to military members always continue for the duration of the disability and are adjusted each year by the increase in the CPI. Generally, workers' compensation payments for permanent total disability (in contrast to payment for all other forms of disability) extend for the duration of disability,

**Table 15**  
**Compensation for Permanent Total**  
**Injuries, All Workers**  
**(\$/wk, unadjusted for taxes, 1988)**

	Cat 1	Cat 2	Cat 3	Cat 4
Mil. disab. sev.(a)	4,125.00	6,696.00	—	—
Mil. disab. ret'mt	143.00	232.00	203.00	422.00
VA compensation	326.00	326.00	369.00	369.00
State WC(b):				
CA	174.75	224.00	224.00	224.00
CO	174.75	322.32	304.21	324.80
GA	174.75	175.00	175.00	175.00
MI	159.00	279.00	290.00	399.00
MO	174.75	291.00	291.00	291.00
NE	174.75	245.00	245.00	245.00
NC	174.75	322.32	304.21	354.00
NJ	183.49	338.44	319.42	369.75
NV	174.75	322.32	304.21	384.00
NY	174.75	300.00	300.00	300.00
TX	174.75	224.00	224.00	224.00
WI	174.75	322.32	304.21	372.00

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: (a) Military members with 2 to 3 years of service (categories 1 and 2) may not retire if their injury is not the result of active duty; they are eligible only for disability severance or VA compensation. Military members with 8 or more years of service do not receive disability severance for injuries rated at 30 percent or more (as all of these injuries are.) (b) Some states limit the duration or total payout for permanent total compensation. None of the states selected (except Colorado and Texas) place limits on compensation. Colorado limits the total payout for occupational disease to \$26,292. Texas limits the duration of compensation for non-scheduled injuries to 401 weeks.

although eight states place limits on either duration or the total payout for the claim. Very few states adjust the benefits for inflation. Military members, then, receive much greater cash compensation than do civilians for permanent total disability. In addition, for total disability lasting longer than one year, the Workers' Compensation Research Institute (WCRI) has found that two-thirds of claimants lose their employer-paid medical insurance (DeVol, 1986). Although full medical care will be available for the work-related injury, the civilian claimant will have to cover other medical needs by other means. Retired disabled veterans are eligible for free or low-priced general health care.

### COMPENSATION FOR FATALITIES

Compensation for fatal injuries is shown in Table 16. Burial benefits under both systems seem about equal. Burial allowances are typically for reimbursement of actual expenses. For military families, there is probably less risk that expenses will exceed the allowance. If the service member dies while on active duty, the burial is completely provided by the service. Any veteran may be buried in a national cemetery, with no charge for the plot or headstone. Additional allowances are payable to surviving families of disabled veterans.

It is important to note that payments to survivors through the VA's Dependency and Indemnity Compensation (DIC) program (applicable only for workers in categories 3 and 4 with dependents) look very low in comparison to survivor benefits received by families of civilians through workers' compensation. However, VA payments continue until the remarriage of the spouse, without any other limits. Generally, workers' compensation payments to survivors continue until the remarriage of the spouse, but 27 states place either a duration or total payout limit on these benefits. Under these limits, survivor payments do not usually end until after six years (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990). Survivors of military personnel continue to receive health care benefits through CHAMPUS or, if ineligible, through CHAMPVA. Civilian survivors receive no health care benefits through workers' compensation.

### FINDINGS

Overall, the evidence (although incomplete) suggests that compensation to service members generally exceeds compensation available to civilians, except in the case of payments to survivors for fatalities.

**Table 16**  
**Death Benefits(a), Worker Categories 3 and 4**  
**(\$/wk, unadjusted for taxes, 1988)**

	Payments to Survivors		Burial
	Cat 3	Cat 4	Allowances(b)
Military	3,000 LS(c)	3,000 LS	Complete
VA	167	196	(d)
State WC(e):			
CO	304.21	371.21	2000
GA	175.00	175.00	5000
MI	290.00	399.00	1500
MO	291.00	291.00	2000
NE	245.00	245.00	2000
NC	304.21	354.00	3000
NJ	273.79	369.75	2000
NV	304.21	384.00	5000
NY	300.00	300.00	3000
TX	224.00	224.00	2500
WI	304.21	372.00	1500

SOURCE: 1988 *Uniformed Services Almanac*; 1988 Current Population Survey data.

NOTES: (a) Survivor payments are generally not made to parents, except in certain circumstances and in the case of the military death gratuity, which would be paid to the parents if there are no dependents. So death benefits are presented for those categories with dependents only. Burial allowances are the same for all categories of workers, regardless of dependents. (b) Generally, burial allowances reimburse only actual expenses. (c) LS denotes lump sum. (d) Veterans may be buried in national cemeteries, with no charge for a plot or headstone. Further benefits are payable only to those veterans eligible for compensation from the VA. For service-connected deaths, an allowance of \$1,500 is payable. For non-service-connected deaths, \$300 is payable for reimbursement. Additionally, for non-service-connected deaths, if the veteran is not buried in a national cemetery, a plot allowance and headstone allowance are available. (e) Some states limit the duration of payments to survivors, although most generally pay until the spouse remarries. Of the selected states, four limit payments to between 300 and 500 weeks.

## VI. OTHER COMPENSATION ISSUES

### REHABILITATION BENEFITS

#### Civilian Workers' Compensation

Although rehabilitation is not always specified in the workers' compensation statutes, all states provide it. Table 17 shows data from the National Council on Compensation Insurance (NCCI) for the percentage of claims with rehabilitation costs, by age group. Rehabilitation is generally involved only with *permanent* claims, which represent a small portion of all claims.

In addition to physical rehabilitation (often an integral part of complete medical treatment), the states also provide vocational rehabilitation and retraining in certain severe cases of disability. The Federal Vocational Rehabilitation Act is now effective in all states. It includes federal funds to aid states in vocational rehabilitation of the industrially disabled (U.S. Chamber of Commerce, 1990).

Generally, during the period of rehabilitation, most states stipulate cash benefits for the temporary and total portion of permanent disability, as well as for board, lodging, and travel (for training away from home). Some states award the costs of tuition, books, and tools. Most state laws deny all compensation to claimants who refuse physical or vocational rehabilitation when offered (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990).

#### VA Disability Compensation

Veterans are eligible for the VA Rehabilitation Program if they have a compensable service-connected discharge and are determined to need rehabilitation services because of an

**Table 17**  
**Claims with**  
**Rehabilitation Costs**

Age Group	Claims (percent)
Under 25	4.6
25 to 34	6.0
35 to 44	6.8
45 to 54	6.0
55 to 64	4.7
65 and older	4.1

SOURCE: National Council on  
Compensation Insurance, 1987.



employment handicap. The VA's vocational rehabilitation program is designed to provide for all services and assistance necessary to enable service-disabled veterans to achieve maximum independence in daily living and, where possible, to become employable. The services and assistance available include benefits like those available from workers' compensation: evaluation to determine potential for rehabilitation; subsistence allowance; payment for tuition, books, fees, tools, and supplies; work-study allowance; and travel expenses. Additionally, prosthetics, no-interest loans, counseling, and other services may be available to a veteran if the VA determines that they are necessary for rehabilitation.

Forty-eight months or more of training and rehabilitation may be authorized in universities, on-job training sites, as well as special rehabilitation sites or the veteran's home, if necessary. According to the VA's Los Angeles regional office, these training benefits are routinely approved for all veterans with a compensable disability (i.e., those rated at 10 percent disability or more).

## **APPEALS PROCESS**

### **Civilian Workers' Compensation**

In all but four states, an administrative agency adjudicates disputes concerning eligibility for benefits and the extent of disability. Decisions of these agencies may be appealed to the courts. In four states, the courts decide all disputed claims. Claims for permanent injury are typically appealed, especially for non-scheduled disabilities. Claims data compiled by the National Council on Compensation Insurance (NCCI) show that 7.2 percent of cases are appealed (12.1 percent of all claims are for permanent disability).

If the award will be made on the basis of wage loss, the insurer may question whether the worker conducted an adequate job search or is voluntarily limiting wages. Generally, the insurer accepts that there is a disability, but the nature and extent of the disability may be in dispute. If the state has a rating bureau, the rating bureau may determine the extent of the worker's impairment by reviewing the medical evidence. If there is no rating bureau, the insurer may have the claimant examined by its own physician, who assesses the disability and resulting benefits.

If there is still no resolution to the case, some states have an informal appeal process, where a referee may hear the case and suggest benefits. The results of this appeal are nonbinding for both parties. The employee may yet appeal in a formal manner. Sometimes the workers' compensation agency may initiate the appeal, although usually the employee petitions for an appeal.

Formal appeal procedures vary greatly among the states. The principal witnesses on both sides are usually physicians. The case may be argued on the basis of lost earnings or lost earning potential, other characteristics (such as age, education, state of labor market), or on impairment or functional limitations. The adjudicator accounts for the bias of both sides and the lack of scientific precision in making the assessment.

The cases often have more than one hearing. Once a decision is reached, the parties have a specified number of days in which to appeal. At this point, the process varies greatly across states. Sometimes appeals are taken to the courts (this is always the case if no workers' compensation commission or board exists). More typically, though, there are provisions for appeal within the agency, possibly to a panel of the workers' compensation commission or board.

A claimant may retain an attorney at any point. The claims data compiled by NCCI show that 7.8 percent of total workers' compensation cases involved legal representation. Four percent of all cases both had legal representation and were appealed. Nearly half of the states establish levels for attorney's fees in the workers' compensation statutes. The remaining states are fairly evenly split between establishing attorney's fees by rule/operating policy and on an individual case basis. For the states establishing limits within the statutes or as a rule/operating policy, the limits specified are 30 percent or less of the claimant's award (DoL: Employment Standards Administration, *State Workers' Compensation Laws*, 1990).

### **Military/VA Disability Compensation**

The Medical Evaluation Board (MEB) completes a medical examination of the service member and determines whether the member is "fit for service." If the MEB recommends separation, the records go to a Physical Evaluation Board (PEB) for review. The member may request a formal PEB, which would include a hearing in which the member, as well as any lawyers or witnesses, may appear and give testimony. After a formal PEB, the records go to the Physical Review Council (PRC) for legal evaluation only. The records are then sent to the Secretary of the appropriate service for a judgment. The service member may add a written appeal to the Secretary. Even after separation from the service, the member may appeal to the Board of Correction of Medical Records (BCMR). The BCMR is the highest-appeal level for military members.

The VA has also established avenues of appeal. A claimant has one year from the date of notification of the determination within which to start the appeals process. The claimant must initiate an appeal by filing a "Notice of Disagreement" with the regional office

responsible for making the determination. The VA must then send the claimant a "Statement of the Case," which describes the issue, facts, applicable law and regulations, and the reasons for the determination. To complete the request for formal appeal, the claimant must file a "Substantive Appeal" within 60 days after the date of the "Statement of the Case" or one year from the date of the original determination, whichever is later. The first level of appeal is to the Board of Veterans Appeals. The veteran may make an appearance at a personal hearing. If the claimant receives an adverse decision and wishes to appeal further, he or she has access to the United States Court of Veterans Appeals. The veteran must file for appeal to the court within 120 days of the mailing of the notice of the decision by the Board of Veterans Appeals.

#### **SUPPLEMENTAL INSURANCE/DISABILITY INSURANCE**

Generally, the need to supplement workers' compensation benefits probably is not significant for most workers with nonserious injuries, but it is likely to be relatively important for older workers and for workers with serious injuries. Information on the supplements for workers' compensation benefits by private or public sources is fragmentary (Berkowitz and Burton, 1987).

Disability compensation programs covering both work-related and nonwork-related injuries and illnesses for civilians include Social Security Disability Insurance (SSDI), state disability insurance, and private disability insurance. Generally, workers' compensation is considered the primary benefit for work-related injuries and illnesses. All of these programs supplement workers' compensation cash benefits by providing benefits equal to the gap between the program maximum and the amount payable by workers' compensation.

In terms of health care, the worker's health insurance provides medical care and some physical rehabilitation for all injuries and illnesses. The worker's health insurance would probably be used only for nonwork-related health episodes, because workers' compensation provides complete care for work-related health problems. Health insurance is not mandatory, but is provided to the worker at the employer's option. Most workers are covered, but many—such as employees of small firms or casual or domestic workers—are not.

A handful of states reduce workers' compensation awards for permanent total disability, knowing that SSDI will supplement the award up to 80 percent of the worker's lifetime average earnings. Military members are also eligible for SSDI, which may supplement military and VA benefits for disability.

### **Social Security Disability Insurance (SSDI)**

SSDI benefits are payable only in cases of permanent and total disability or fatalities (these cases need not be work-related). The Social Security Administration (SSA) employs the most stringent definition (wage-loss in nature) for "total" disability; it requires that the claimant can perform no substantial gainful work in any part of the national economy. SSA defines "permanent" disability as disability that has lasted or is expected to last for at least one year or that is expected to result in death.

Workers who have become permanently totally disabled may qualify for SSDI benefits only if they have worked long enough and recently enough under Social Security to be insured. Children under the age of 18 qualify for benefits on the basis of the worker's earnings history, in cases of permanent total disability or fatality. Spouses are eligible for benefits in some instances. In 1990, workers earned one credit of coverage for each \$520 in earnings per year, up to four credits with earnings of \$2,080 or more per year. The earnings required for credits increase annually with general wage levels. Workers aged 31 through 42 need 20 credits to qualify. Younger workers need fewer credits, and older workers need more. Older workers generally must have earned at least 20 credits in the 10 years immediately before becoming disabled.

The amount of monthly SSDI benefits payable is based on a worker's lifetime average earnings (that is, average earnings up to the point of disability) covered by Social Security, up to a maximum of 80 percent of the average. Benefits are usually nontaxable, but if the claimant's income exceeds thresholds determined by his or her filing status, SSDI benefits will be subject to federal income tax. After the claimant has been entitled to monthly disability for 24 months, the claimant receives Medicare hospital insurance and is eligible to enroll and pay the monthly fee for Medicare medical insurance. The Social Security Administration (SSA) pays for any special examinations or tests that SSA requires to verify the continued disability. Dependents may also be eligible for disability benefits. If claimants disagree with the award, four appeal levels are available to them (DoHHS: Social Security Administration, 1990).

In addition, the Social Security Administration provides vocational rehabilitation services. It also makes special provisions for a trial work period, deductible work expenses (such as for a wheelchair), and continuation of Medicare beyond the termination of monthly SSDI payments.

In addition to SSDI, the Social Security Administration has another program that makes monthly payments to people in financial need who are disabled. Supplemental Security Income (SSI) is financed from general funds of the U.S. Treasury rather than from

Social Security taxes. Medical requirements to receive SSI are the same as for SSDI, but there are asset and income limitations. No work credits are required for SSI. Some disabled persons may receive checks from both SSDI and SSI.

### **State Disability Insurance**

Only five states (CA, HI, NJ, NY, and RI) administer state disability insurance programs. California's program is used as the example for this type of disability coverage.

California's disability insurance program is designed to provide short-term assistance for up to 52 weeks. It provides assistance for both total and partial disabilities; pregnancy is among the eligible disabilities. The state calculates benefits on a base period of 12 months of wages (which need not be continuous, but may be pieced together). Only wages subject to the state disability insurance tax are eligible for the base period. The maximum payout is limited to the amount of base period wages. California offsets worker's compensation benefits before paying disability insurance. The Employment Development Department of the State of California pays fees for medical examinations to verify disability. Most Californians are covered, except for those working in a few specifically excluded occupations. The law requires all employers with more than \$100 in quarterly payroll to cover their employees. Military members are not eligible (State of California: Employment Development Department, 1990).

### **Private Disability Insurance**

Private disability income coverage provides for the partial replacement of income lost by employees as the result of an injury, illness, or pregnancy. The disability may be the result of any cause, work-related or other. Long-term disability benefits are usually payable until retirement, a specific age, or recovery from disability. However, benefits are not usually payable until short-term disability payments cease (Hill, 1987). Whether the benefits are taxable depends on who paid for the benefit. If the employer pays the benefit (in some cases of short-term disability) or if the employer paid for the insurance providing the benefit, the employee receives the benefit as taxable income.

In 1988, in the annual Bureau of Labor Statistics (BLS) survey of medium and large firms, private short-term disability protection was available to most (89 percent) employees. Private short-term disability protection was provided through sick leave, sickness and accident insurance, or both. Sick leave usually provides all of the worker's normal earnings, whereas sickness and accident insurance (more common to hourly workers) usually replaces 50 to 67 percent of pretax pay. The survey also found that employees of all respondents had

available more than 90 days of coverage at an average replacement of nearly 60 percent of pretax earnings (DoL: Bureau of Labor Statistics, 1988).

The 1988 BLS survey showed that 42 percent of the employees covered by the study had private long-term disability insurance, and 30 percent (some of whom also had long-term disability insurance) had convertible pension plans that would immediately pay out disability benefits. Most private long-term disability plans offset against other sources of compensation for disability, such as workers' compensation, SSDI, and convertible pensions. These plans are so varied that no plan can be considered "typical." Very little information exists about the prevalence of plans or how these plans interact with other disability compensation systems. Generally, private long-term disability insurance begins after six months of disability and continues until retirement. Typically, these plans pay 50 to 60 percent of pretax earnings.

## VII. TRENDS IN WORK-RELATED DISABILITY COMPENSATION

### 1975 TO PRESENT

The military's system for compensating disability has been very stable since 1949. By contrast, the civilian workers' compensation system has undergone massive changes since 1972, when the National Commission on State Workers' Compensation produced its report. The average score for compliance with the 19 "essential recommendations" has risen from 6.9 out of 19 in 1972 to 12.2 in 1989; most of the gain was achieved before 1978. The states' reforms have dealt largely with inadequate coverage and inadequate benefits. The military and VA have had a good record in the areas of coverage and benefit levels and are unmatched by civilian programs even today.

During the 1970s and 1980s, states increased coverage to include more occupations (such as agricultural workers), employees in smaller companies, and contract/volunteer employees. Coverage remains spotty for casual and domestic workers. The military system has always covered all military personnel. In terms of coverage, the civilian workers' compensation programs are only now approaching the breadth of the military disability compensation program.

During the same period, states increased benefits by raising maximum weekly benefits and raising replacement rates to the nearly standard 66-2/3 percent of the worker's pretax average wages. In 1972, only 14 states linked their weekly maximums to some measure of current wage levels to provide automatic increases. In 1988, 42 states did so (Burton (ed.), 1988). The states also improved benefits for permanent partial disability and eliminated restrictions on full coverage for occupational diseases. They improved rehabilitation services as well. Many states legislated penalties for noncompliance or lateness in providing the stipulated benefits.

Service members and veterans have always been eligible for full medical care for the claim through either the military or VA hospital system. In terms of cash reimbursement, the evidence, though incomplete, suggests that compensation to service members generally exceeds compensation available to civilians, except in the case of payments to survivors for fatality cases.

### FOR THE FUTURE

The economy's continuing change in industrial/occupational composition toward service sector jobs and away from manufacturing will likely continue to result in fewer injuries. Manufacturing has traditionally been one of the sectors of the economy with the

highest injury rates (Burton (ed.), 1988). The National Council on Compensation Insurance (NCCI) predicts that the switch to a greater proportion of service jobs in the economy will cause stress claims to grow relative to other types of workers' compensation claims. Judging by claim experience, white collar and service jobs seem more likely to produce mental stress claims than blue collar and manufacturing jobs. Recent evidence has shown that managerial employees and professionals are particularly susceptible to workplace stress. More costly claims would result if these workers filed for workers' compensation, because these workers tend to be higher paid (National Council on Compensation Insurance (NCCI), 1985).

Stress could be classified as a type of occupational disease, but it is generally considered in a class all of its own. The new growth area for stress claims is "mental-mental" stress, in which some source of stress produces an emotional disability. "Physical-mental" stress (in which a physical trauma such as the loss of a limb creates a mental disability) and "mental-physical" stress (in which mental stress produces a physical disability such as a heart attack or ulcer) have long been compensated, with restrictions. The mental-mental cases are much more difficult to assess because it is difficult to establish an objective record of either the stressor or the resulting disability. Compensation practices for mental-mental cases have not been stipulated by statutes, but have been determined by case law. In nine states, case law has established that there will be no compensation for mental-mental stress. Eight other states compensate only if the source of stress is a sudden, shocking event. Eleven states compensate only if the source of stress is prolonged, extraordinary stress. Seven states compensate mental-mental stress even if the source of stress is not unusual or in excess of everyday life. The remaining states do not have case law that addresses mental-mental stress. Arthur Larson, a leading workers' compensation legal scholar, predicts that jurisdictions will eventually lower legal barriers to the compensability of claims in which a gradual emotional stimulus is alleged to have caused a mental disability (National Council on Compensation Insurance (NCCI), 1985).

Service-sector jobs involving computers may result in more claims for repetitive strain (e.g., carpal tunnel syndrome) and exposure to electromagnetic fields. Other sources of exposure to electromagnetic fields include power lines, electrical appliances, televisions, and radar. Chemical and radioactive risks will continue to pose problems (National Council on Compensation Insurance (NCCI), 1990).

The exclusive remedy principle states that no further liability may be assessed against an employer for an injury covered by workers' compensation law. This principle seems to be in good shape after some testing, according to Larson, although this point is debatable. More important for the coming decade are the third-party suits in which an employee can sue a



third party as the result of an injury at the workplace (such as the Johns-Manville asbestosis suits). In response, Burton suggests that a general no-fault system might arise to provide cash benefits and medical care to all those who are disabled by exposure to toxic substances. Such a system would require significant changes in the current form of workers' compensation programs (Burton (ed.), 1988).

Both Larson and Burton think there is a trend toward compensating permanent partial disability on a wage-loss basis, as opposed to the impairment basis employed by the VA schedule and AMA guide. However, New York has found that wage-loss compensation does not achieve the cost savings its proponents tout.

Efforts to contain health care costs will probably spill over into workers' compensation. Cost-sharing mechanisms such as coinsurance (in which employees pay a percentage of the cost) and deductibles, which are both standard components of health care programs today, will likely be proposed for workers' compensation as well. If workers' compensation does not institute some type of cost sharing, it may be in danger of becoming the deep pocket or program of choice among claimants because cost-sharing measures will discourage claimants from using their other health care options. Cost sharing would go against the long tradition that medical care be free to injured workers.

In its search for ways to raise revenues and reduce deficits, the federal government may try to make workers' compensation benefits subject to taxation. Portions of the old-age benefits of Social Security are already taxable, and all unemployment insurance benefits are taxable. The Reagan tax reform package of 1985 included a proposal to tax workers' compensation benefits, and the proposal may re-emerge in future years.

Other issues concerning workers' compensation will include its integration with the numerous public and private pension, disability, and other income-replacement programs available. The decade of attempting a federal standard for workers' compensation seems to have ended. Federal intervention in workers' compensation is likely to be limited to specific occupational diseases that have attracted popular attention.

## **Appendix A**

### **NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS**

Throughout the description of civilian workers' compensation, the views of the presidentially appointed National Commission on State Workmen's Compensation Laws (1972) have been referenced.

The commission was chaired by John F. Burton, Jr., of Cornell and comprised 18 people representing the various interests involved in workers' compensation: insurance, workers' compensation administration, the law and medical professions, labor unions, and public and political members. In July 1972, the commission submitted to Congress and the president a unanimous report detailing the findings and recommendations that emerged from their study of workers' compensation. Nineteen of the recommendations were deemed essential.

The commission gave the states three years to adopt the essential recommendations. At three years, it recommended that compliance be evaluated. If the states had not implemented the standards, Congress was requested to enact federal legislation to force the states to comply.

Although the states failed to meet all of the standards and Congress did not pass new legislation requiring them to do so, the commission's report was responsible for changes in the states' workers' compensation laws. The Department of Labor periodically measures state compliance with the commission's 19 essential recommendations, and it found that the average score for the states and the two federal programs increased from 6.9 in 1972 to 12.2 (out of a possible 19) in 1990.

The commission's report is still widely quoted today in workers' compensation literature. The 19 essential recommendations regarding coverage, benefit levels, and medical care—while still not met in total by all states—are considered the desirable minimum standard for workers' compensation program. The nineteen essential recommendations are listed on the next page.

## Nineteen Essential Recommendations, National Commission on State Workmen's Compensation Laws

The Commission recommends that the states incorporate the following essential recommendations:

- R2.1 That (a) coverage by workmen's compensation laws be compulsory for private employments generally and that (b) no waivers be permitted.
- R2.2 That employers not be exempted from workmen's compensation coverage because of the number of their employees.
- R2.4 That a two-stage approach to the coverage of farm workers be instituted: First, as of July 1, 1973, that each agriculture employer with an annual total payroll exceeding \$1,000 be required to provide workmen's compensation coverage to all of his employees. Second, as of July 1, 1975, that farm workers be covered on the same basis as all other employees.
- R2.5 That, as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.
- R2.6 That workmen's compensation coverage be mandatory for all government employees.
- R2.7 That there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.
- R2.11 That an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.
- R2.13 That all States provide full coverage for work-related diseases.
- R3.7 That subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66-2/3 percent of the worker's gross weekly wage.
- R3.8 That as of July 1, 1973, the maximum benefit for temporary total disability be at least 66-2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the state's average weekly wage.
- R3.11 That the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, that the benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States.

- R3.12 That subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66-2/3 percent of the worker's gross weekly wage.
- R3.15 That, as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66-2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.17 That total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.
- R3.21 That subject to the State's maximum weekly benefit, death benefits be at least 66-2/3 percent of the worker's gross weekly wage.
- R3.23 That, as of July 1, 1973, the maximum weekly death benefit be at least 66-2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.25 That (a) death benefits be paid to a widow or widower for life or until remarriage; that (b) in the event of remarriage, two years' benefits be paid in a lump sum to the widow or widower; and that (c) benefits for a dependent child be continued until the child reaches 18 (or beyond such age if actually dependent) or until age 25 if enrolled as a full-time student in any accredited educational institution.
- R4.2 That there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.
- R4.4 That the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

Source: National Commission on State Workmen's Compensation Laws, *Report*, U.S. Government Printing Office, Washington, D.C., July 1972.

**Appendix B**  
**DEPARTMENT OF LABOR 1990 SURVEY OF STATE COMPLIANCE**

The following table is the result of the 1990 Department of Labor review of state and jurisdiction laws to assess compliance with the 19 essential recommendations of the National Commission on State Workmen's Compensation Laws. The possible total score is 988, or 19 recommendations multiplied by 52 jurisdictions for which data were available. The current total score of 635.75 represents 64.35 percent of the possible total.

**Table B.1**  
**Department of Labor 1990**  
**Survey of State Compliance**

State	Total	Coverage	Benefits	Medical
Total	635.75			
Average	12.23			
Alabama	12.50	3.50	7.00	2.00
Alaska	13.50	3.50	8.00	2.00
Am Samoa	NA	NA	NA	NA
Arizona	11.50	5.50	4.00	2.00
Arkansas	7.50	2.50	3.00	2.00
California	12.00	6.00	5.00	1.00
Colorado	13.00	5.50	5.50	2.00
Connecticut	14.00	3.50	8.50	2.00
Delaware	10.50	3.50	5.00	2.00
Dist Columbia	15.75	6.00	7.75	2.00
Florida	10.50	3.50	6.00	1.00
Georgia	9.50	2.50	5.00	2.00
Guam	NA	NA	NA	NA
Hawaii	14.50	6.00	6.50	2.00
Idaho	9.00	5.00	2.00	2.00
Illinois	13.50	3.50	8.00	2.00
Indiana	11.00	5.00	4.00	2.00
Iowa	14.50	4.50	8.00	2.00
Kansas	9.50	4.50	4.00	1.00
Kentucky	13.50	5.50	6.00	2.00
Louisiana	11.25	4.50	4.75	2.00
Maine	13.50	4.50	8.00	1.00
Maryland	14.25	3.50	8.75	2.00
Massachusetts	13.50	4.00	7.50	2.00
Michigan	9.50	2.50	5.00	2.00
Minnesota	12.75	3.00	7.75	2.00
Mississippi	7.00	2.00	3.00	2.00
Missouri	10.75	5.00	4.75	1.00
Montana	14.75	4.50	8.25	2.00

**Table B.1—continued**

State	Total	Coverage	Benefits	Medical
Nebraska	13.50	5.50	6.00	2.00
Nevada	14.00	4.00	8.00	2.00
New Hampshire	18.75	8.00	8.75	2.00
New Jersey	10.75	6.50	3.25	1.00
New Mexico	10.00	3.50	4.50	2.00
New York	10.75	3.00	5.75	2.00
North Carolina	13.50	3.50	8.00	2.00
North Dakota	13.50	4.00	7.50	2.00
Ohio	15.50	4.50	9.00	2.00
Oklahoma	9.75	4.00	3.75	2.00
Oregon	13.75	5.00	6.75	2.00
Pennsylvania	13.00	4.00	7.00	2.00
Puerto Rico	11.75	6.00	3.75	2.00
Rhode Island	13.50	3.00	8.50	2.00
South Carolina	11.00	2.00	7.00	2.00
South Dakota	13.25	2.50	8.75	2.00
Tennessee	8.50	3.50	3.00	2.00
Texas	9.50	2.50	5.00	2.00
Utah	12.00	5.00	5.00	2.00
Vermont	15.25	4.50	8.75	2.00
Virginia	10.50	1.50	7.00	2.00
Virgin Islands	NA	NA	NA	NA
Washington	13.00	6.00	5.00	2.00
West Virginia	13.75	4.00	7.75	2.00
Wisconsin	15.00	5.00	8.00	2.00
Wyoming	9.00	3.00	4.00	2.00

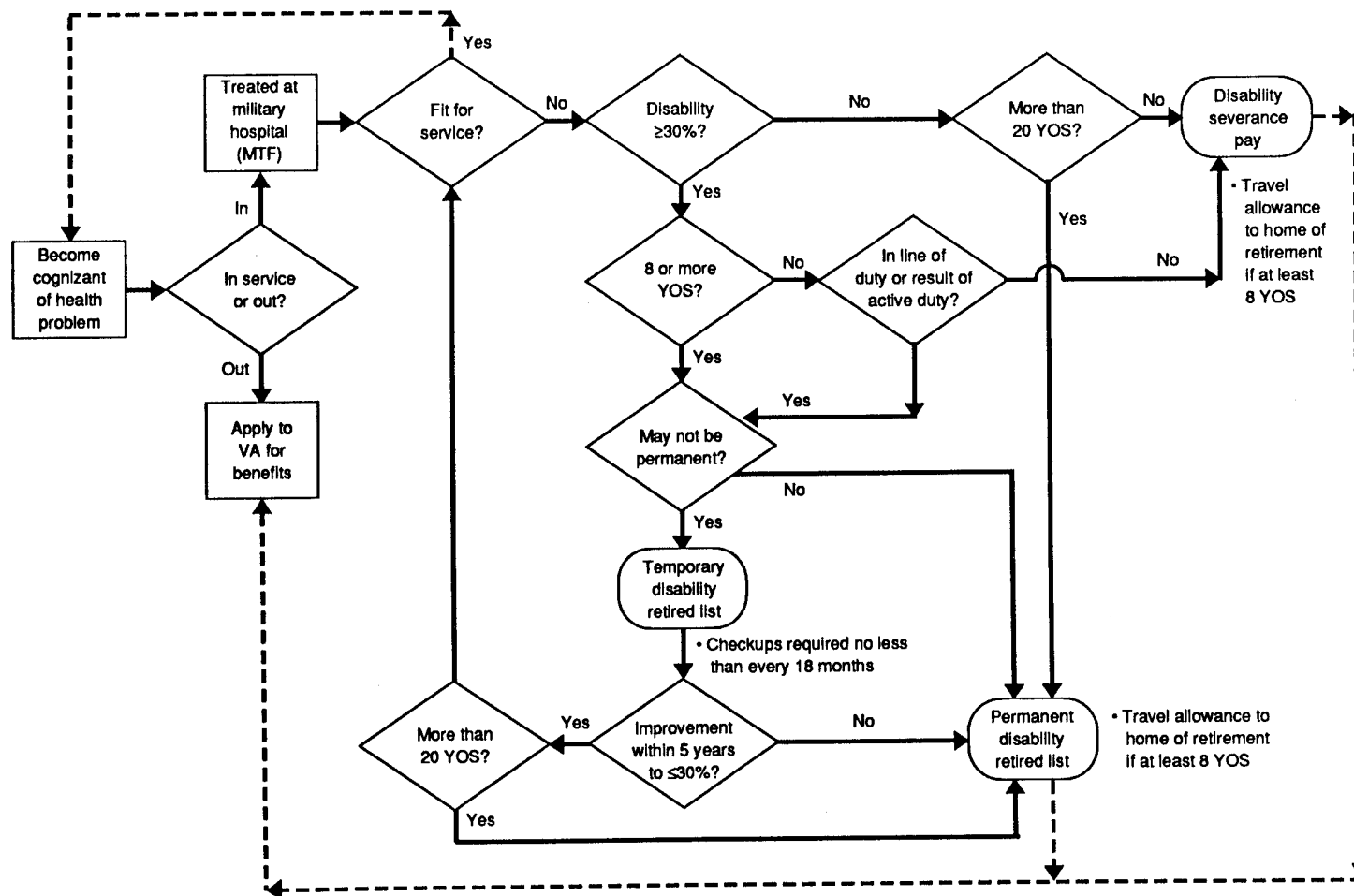
**Appendix C**  
**CHARACTERISTICS OF THIRTEEN STATE WORKERS'**  
**COMPENSATION PROGRAMS**

State(a)	Rating Method (Scheduled/Non-Scheduled)	Rating Guide (Non-Scheduled)	State Maximum- Permanent Total/Duration
CA(b)	Potential wage loss for both (619.25 wks for 99.5% disability)	CA guide required	\$266/life
CO	Scheduled wks/"body as a whole" required.	AMA guide required	\$371.21/life
FL	Wage loss for both	—(c)	\$382/DD (d)
GA	Scheduled wks/"body as a whole" (300 wks for total disability)	AMA guide recommended	\$175/DD
MI	Scheduled wks/wage loss	—(c)	\$427/DD
MO	Scheduled wks/"body as a whole" (400 wks for total disability)	AMA guide recommended	\$289.75/DD
NE	Scheduled wks/"body as a whole" (300 wks for total disability)	AMA guide required	\$245/DD
NC	Scheduled wks/"body as a whole" (300 wks for total disability)	AMA guide recommended	\$390/DD
NJ	Scheduled wks/"body as a whole" (600 wks for total disability)	(no guide specified)	\$370/450 wks (sometimes for life)
NV	"Body as a whole" for both (Each percentage point of disability receives 0.6% of worker's average weekly wage, payable for the duration of the disability)	AMA guide required	\$368.82/life
NY	Scheduled wks/wage loss	—(c)	\$300/DD
TX	"Body as a whole" for both (400 wks for total disability)	AMA guide required	\$238/401 wks (life for statutory permanent total)
WI	Scheduled wks/"body as a whole" (1,000 wks for total disability)	WI guide required	\$378/life

SOURCE: Telephone interviews, 1990 Analysis of Workers' Compensation Laws.

NOTES: (a) None of these states stipulates that dependent allowances must be paid. See Appendix B for the states' scores of compliance with the "essential recommendations" of the National Commission on Workmen's Compensation Laws. (b) Only California has a provision for an automatic cost-of-living increase; after two years of temporary total payments (which may be paid for life), the payments are increased. (c) No rating guide is required if rating on a wage-loss basis. (d) DD = duration of disability.

Appendix D  
MILITARY DISABILITY COMPENSATION PROCESS



SOURCE: 1990 *Uniformed Services Almanac*  
NOTE: YOS = Years of service

Fig. D.1—Military disability compensation process





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